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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11281 OF 2017

Dosan Abel Dholya ...Petitioner
vs
Mira Bhayander Municipal Corporation And Ors. ...Respondents

**WITH
WRIT PETITION NO.11300 OF 2017**

Alpesh Sankhe ...Petitioner
vs
Mira-Bhayander Municipal Corporation And Ors. ...Respondents

**WITH
WRIT PETITION NO.11302 OF 2017**

Sadanand Vishnu Patil ...Petitioner
vs
Mira-Bhayander Municipal Corporation And Ors. ...Respondents

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Mr. A.V. Bukhari, Senior Advocate, a/w. Ms. Fauzia Bukhari, i/b. Mr. T.R. Yadav, for the Petitioner.

Mr. Avinash K. Jalisatgi, a/w. Mr. Amol B. Desai and Mr. Vaibhav U. Jagdale, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: JUNE 4, 2018

P.C. :

. Heard learned Counsel for the parties. Rule. Taken up for hearing forthwith. The petition challenges an order passed by the Industrial Court at Thane under Section 30(2) of the MRTU & PULP Act.

2. The subject matter of controversy in the present petition is the appointment of the Petitioner as a Sub Station Officer in the Fire Department of the Respondent Corporation. The Petitioner has been working with the Respondent Corporation since about 30 May 2011. The advertisement for the post of Sub Station Officer was issued by the Respondent Corporation sometime in October 2010. The Petitioner applied for the post and cleared the written test. He, thereafter, also cleared the fitness and field test, whereupon he was called for an interview. The Petitioner was asked to submit all relevant documents, including documents in support of the relevant educational and technical qualifications held by him for the post advertised. The Petitioner produced all these documents in the course of his oral interview and was selected by the selection committee of the Respondent Corporation. In pursuance of his selection, an appointment order was issued to the Petitioner on 30 May 2011. The Petitioner was appointed on a probation of two years and was asked to resume duties at the earliest. The appointment order *inter alia* required the Petitioner to once again submit the originals and certified true copies of the various documents, including documents of his educational and technical qualifications. The Petitioner joined duties on 4 June 2011 and submitted all the requisite documents. On 20 September 2011, a notice was issued to him by the Respondent Corporation *inter alia* communicating to the Petitioner that as against the technical qualification of passing the course of Sub Station Officer from National Fire Service College, Nagpur, the Petitioner had submitted a certificate of having passed the course of Sub Station Officer from All India Institute of Local Self-Government, Mumbai, having its college for conducting the course at Vadodara, Gujarat and requiring the

Petitioner to submit the requisite certificate from National Fire Service College, Nagpur, within eight days, failing which the Petitioner was to be removed from services. This order is challenged by the Petitioner in a complaint of unfair labour practice under MRTU & PULP Act before the Industrial Court at Thane. The impugned order is passed by the Industrial Court on the interim application of the Petitioner for restraining the Corporation from terminating his services.

3. The Industrial Court has refused to order interim relief in favour of the Petitioner mainly on two grounds. Firstly, it is held that apropos of the educational qualification of a degree from a recognized university, the Petitioner has only passed 12th standard examination and that instead of the course at National Fire Service College, Nagpur, the Petitioner has claimed to have completed the course of Sub Station Officer from All India Institute of Local Self-Government. In the first place, the observation that the Petitioner has passed only 12th standard examination is contrary to the record of the case. Admittedly, the Petitioner holds a degree certificate from a recognized university. As regards successful completion of Sub Station Officer's Course, though the Petitioner does not hold the qualification of successful completion of Sub Station Officer's Course from National Fire Service College, Nagpur, which is said to be a requirement under the advertisement issued for the post by the Respondent Corporation, the Petitioner has admittedly successfully completed Sub Station Officer's Course from All India Institute of Local Self-Government. The two qualifications are on par under the rules framed by the Respondent Corporation. The argument that the technical qualifications specified in the advertisement are

contrary to the rules framed in this behalf does have prima facie merit. Mr. Jalisatgi for the Respondent Corporation submits that though these rules are framed and passed by the Respondent Corporation, they have not received the assent of the State Government and are not in force. The fact, however, remains that there are no other contrary rules and the only rules in this behalf, which exist since about 2004, are these rules.

4. Secondly, and more importantly, the selection committee itself was conscious of the fact that some of the candidates, who were selected for the posts of Sub Station Officers, did not hold the qualification of successful completion of a course from National Fire Service College, Nagpur. But since these candidates had completed Fire Service Course from institutes approved by Central/State Governments and also fared well in the competitive written as well as fitness and field tests, the committee was of the view that they should be considered for the posts advertised and, accordingly, candidates were interviewed by the selection committee. The selection committee duly scrutinized the educational and technical qualifications of all candidates and decided to accept candidates, who had successfully completed the Fire Station Officer's Course either from a Central or State Government Institution or from All India Council of Technical Education or from any institution recognized by Maharashtra Board of Technical Education. It is not disputed that All India Institute of Local Self-Government is recognized by the State Government as an approved institution for the Course of Fire Station Officer. Accordingly, after a conscious decision in that behalf, the Petitioners and others were appointed to the posts of Sub Station Officers on the basis of their qualifications. The Petitioner's qualification of

successful completion of Fire Officer's Course from All India Local Self-Government, Vadodara was accordingly accepted by the selection committee in its minutes whilst approving the Petitioner's appointment.

5. In the face of all these facts, the Petitioner's case does merit *prima facie* acceptance and, accordingly, the Industrial Court ought to have passed the interim order prayed for by the Petitioner protecting his services with the Respondent Corporation. Particularly so, as the Petitioner was working with the Respondent Corporation as a Sub Station Officer, as noted above, since June 2011.

6. The impugned order of the Industrial Court, accordingly, cannot pass muster and is required to be interfered with in the writ jurisdiction of this Court. Accordingly, Rule is made absolute and the impugned order of the Industrial Court is quashed and set aside and the Petitioner is granted interim relief in terms of prayer clauses (a) and (b) of Complaint (ULP) No.403 of 2011.

7. It is clarified that the observations made in this order are for the purposes of deciding the writ petition, which challenges an interim order of the Industrial Court. The main complaint may be finally decided by the Industrial Court on its own merits and without reference to this order.

8. In the companion petitions, namely, Writ Petition Nos. 11300 of 2017 and 11302 of 2017, facts are more or less similar, except that in the case of technical qualifications, instead of successful completion of Fire Officer's Course from National Fire Service College,

Nagpur, one of the Petitioners (namely, Petitioner in Writ Petition No.11302 of 2017) has successfully completed his Fire Officer's Course from the Institute of Guvahati (which is said to be a center of the National Fire Service College, Nagpur) and, secondly, both Petitioners did not have the educational qualification of a degree from a recognized university on the date of their appointment. It is, however, not in dispute that both Petitioners now hold degrees from recognized universities. In the premises, for the same reasons, as are considered above in case of the Petitioner in Writ Petition No.11281 of 2017, Rule is made absolute even in these two petitions and the respective impugned orders are set aside and substituted in terms of prayer clauses (a) and (b) of their respective interim relief applications.

(S.C. GUPTE, J.)