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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9471 OF 2016

Thane Zilla Parishad And Anr. ...Petitioners

vs

Smt. Rajeshree Ramchandra Jalnapure ...Respondent

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Mr. Shankar P. Thorat, for the Petitioners.

Smt. Rajashree R. Jalnapure, Respondent present in person.

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CORAM : S.C. GUPTA, J.

DATED: JUNE 22, 2018

(ORAL JUDGEMENT) :

. Heard learned Counsel for the parties. This petition challenges a revisional order passed by the Industrial Court at Thane. The revision arose out of a complaint of unfair labour practices made by the Respondent herein to the Labour Court at Thane, challenging her termination from service. The Labour Court in its order dated 17 November 2014 held that the departmental enquiry conducted by the Petitioner was not fair and proper and the findings of the Enquiry Officer were perverse. This order was challenged by the Petitioner in revision before the Industrial Court. The Industrial Court dismissed the revision application and directed the Labour Court to hear the complaint on the remaining issues in preference to other matters and dispose it of as early as possible.

2. The Respondent was working as an Assistant Nurse with the Petitioner Zilla Parishad. She was working initially in village Tulai and on transfer thereafter in village Tokawade at Taluka Murbad in Thane District. She submitted an application for transfer from Tokawade Murbad to Solapur on account of her mother's ill-health. Though a vacancy of Assistant Nurse in OBC category (to which the Respondent belongs) was available in Zilla Parishad Solapur, transfer was refused to her on the ground that she had not completed 10 years tenure in service and there was a bar to make such transfer. In between for sometime the Respondent was absent from duty. The Petitioner Zilla Parishad, therefore, issued a show cause notice to her. Since the Respondent failed to respond to the show cause notice, her services were terminated by Zilla Parishad with effect from 13 January 2003. The termination was challenged by her before the Additional Commissioner, Konkan Division under the Maharashtra Zilla Parishads District Services (Discipline And Appeal) Rules, 1964. Her appeal was dismissed by the Additional Commissioner. She, thereupon, preferred a writ petition before this Court. The writ petition was, however, withdrawn by her with liberty to file a complaint before the Labour Court. The Respondent, accordingly, filed the present complaint, being Complaint (ULP) No.149 of 2012, in the Labour Court at Thane alleging unfair labour practice under items 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act, 1971. The Labour Court in its order dated 17 November 2014 held that the enquiry conducted against the Respondent was not fair and proper and the findings of the Enquiry Officer were not just and proper. The Court held that the enquiry was conducted ex-parte against the Respondent. The Respondent was at the time of enquiry suffering from tuberculosis

and could not attend the enquiry. There are medical certificates on record to show the Respondent's illness and inability to attend the enquiry proceedings. In the premises, the Labour Court held the ex-parte enquiry as not fair and proper. The Court also held the report of the Enquiry Officer to be perverse, because deliberate absence on the part of the Respondent was not duly proved; and considering the medical certificates and the fact that the Respondent was suffering from tuberculosis during the period of her absence which was within the knowledge of the Petitioner, the findings of the Enquiry Officer in this behalf were perverse.

3. No fault can be found with either of the two conclusions of the Labour Court. The record bears out that the Respondent was absent during the enquiry due to serious illness and, in the premises, conclusion of the enquiry proceedings ex-parte and in a short period would amount to an improper or unfair enquiry. The findings of the Enquiry Officer also do not indicate proper application of mind or a conclusion that could be arrived at by a reasonable person duly instructed in law. The revisional Court in its impugned order dated 20 August 2015 did not find any illegality or irregularity in the conclusion of the Labour Court. The Court found that the conclusion was proper; that there was no opportunity granted to the Respondent to defend her case and justify her absence on duty on the basis of serious illness and long treatment taken by her in J.J. Hospital at Mumbai. Accordingly, keeping in view the submissions of both sides, the Industrial Court came to a conclusion that there was no warrant for interfering with the impugned order (Part I) delivered by the Labour Court and dismissed the revision application.

4. No fault can be found with the approach or analysis of both courts below. The orders clearly exhibit a possible view which is supported by evidence. There is no irrelevant or non-germane material considered by the Court below while arriving at their conclusions. There is no disregard of any relevant material or circumstance either. In the circumstances, the orders do not warrant any interference in writ jurisdiction of this Court.

5. Accordingly, the writ petition is dismissed. The Labour Court will dispose of the complaint finally as expeditiously as possible and in any event, within a period of six months from today.

(S.C. GUPTE, J.)