

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1534 OF 2018

Municipal Corporation of Gr. Mumbai. .. Petitioner.

V/s.

Bombay Electric Workers Union .. Respondents.

Mr. Vishal Talsania a/w. Ms. Kavita Anchan and Mr. Arsh Misra, I/b. M.V. Kini & Co., advocate for petitioner.

Mr. Kishorekumar S. Shetty, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : SEPTEMBER 3, 2018.

P. C. :

1 Heard Learned Counsel for the petitioner and the learned counsel for the respondent at length.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein being statutory body carrying out public functions of Electric supply as well as private transportation to the buses in the city of Mumbai impugns the directions given vide order dated 11/8/2016 in Complaint(ULP) No. 10 of 2014. It is the contention of the

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petitioner that as per promotion policy determined for promotion to the post of Assistant Traffic officer, 25% of the total number of posts are reserved for traffic out door supervisor staff and the balance post i.e. 75% was to be filled by giving invitation from internal candidates who possess a degree in any faculty and are below 30 years of age. That for filling the post of 25% categories, reservation norms as per the directions of the Government of Maharashtra are followed.

4 That the genesis of the said promotional system is in the negotiations which the petitioner had with the representative union and which is documented by a joint note dated 23/4/1974. The discussions were held on 2/1/1975 between representative union and the petitioner and rules were laid down and the same is being followed since then. It is submitted by the petitioner that in Writ Petition No. 88 of 1968 consent terms were filed between the parties and it was agreed between the parties that 25% of the vacancies in the post of traffic supervisor in Grade G-8 are to be filled by promoting suitable candidate from amongst traffic out door supervisor staff. The designation of the traffic supervisor was changed to assistant traffic officers with effect from 1st October, 1983. In the year 1999 vide circular date 1st January, 1999, the petitioner had invited applications from the internal graduate candidates who were eligible for promotion as against 75% quota. A written test was

conducted on 31st October, 1999. 275 candidates appeared and 53 candidates were declared successful in written test and 52 candidates were finally declared successful after interview and placed on a waiting list. Out of them, 46 candidates belong to open category, 4 candidates belong to schedule caste, 1 candidate belongs to Normadic Tribe category and 1 candidate belongs to Special Backward Class.

5 Thereafter, written tests were conducted for filling up the posts of the Assistant Traffic Officer. An advertisement was issued by the Petitioner undertaking on 17/7/2013 for filling up the post of ATO from 25% quota and therefore, the person in the waiting list from 75% quota had no right to claim for the promotion of the post reserved for 25% quota. That the respondent herein had also filed Complaint(ULP) No. 10 of 2014 and an application was filed below Exh. U-2 challenging the quota system.

6 An application was filed seeking interim stay. By an order dated 10th April, 2014, the Industrial Court had clearly observed that the selection process initiated in the year 1999, in which the waiting list was prepared on 31/10/1999 was only for those person who are belonging to 75 % quota. The Industrial Court was of the opinion that the respondent had not committed breach of service conditions and had not indulged into favouritism and partiality to any set of workers. It was further held

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that Union had failed to prove unfair labour practice on the part of the respondent and therefore, interim relief application was rejected vide order dated 10th April, 2014.

7 The evidence was recorded and the Complaint (ULP) No. 10 of 2014 was dismissed vide order dated 11th August, 2016. The Industrial Court had held that the persons belonging to the open category enlisted in the waiting list were not entitled to claim promotion from 25% meant for ATOs. However, the Court was of the opinion that 9 employees who are party to the complaint were on the waiting list since 2000. They were on the verge of retirement and therefore, a direction was issued to the respondent undertaking that as and when vacancy would arise in future, the candidates of the waiting list of the year 2000 shall be considered preferentially over the candidates in the waiting list of the year 2013 and the appointment for the post of ATOS shall be made accordingly.

8 On perusal of the judgment, it is clear that the Industrial Court has recorded a positive finding that the petitioner herein had in no way indulged into unfair labour practice and therefore, it was not appropriate on the part of the Industrial Court to issue directions to consider the persons from the waiting list of the year 1999. In fact, the Court had held that the workmen had no right to be promoted as against the waiting list of the year 2013. The nine employees did not belong to

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the categories either Schedule caste, VJ(A), NTC, SPC and open category. They were already working in the department and therefore, they have no right to claim promotion from 25% quota, which is reserved for the traffic out door supervisor staff. The circular dated 17/7/2013 was for calling candidates for the written test only for the post under 25% quota reserved for traffic out door supervisor staff i.e. ATOs. An assurance was given by the petitioner company that the employees who were on the waiting list belonging to 75% quota will be permitted as and when vacancy arises. Moreover, the respondents are party to the negotiations held in 1974 and the consent terms filed in Writ Petition No. 88 of 1968. Once the complaint is dismissed by holding that the Petitioners have not indulged into unfair labour practice, the directions given by the Industrial Court would be misplaced and inappropriate. No justifiable reasons have been assigned for giving said directions and therefore, the order dated 11/8/2016 deserves to be quashed and set aside.

9 Hence, following order is passed :

ORDER

- (i) The petition is allowed.

- (ii) The impugned Judgment and Order dated 11/8/2016 passed by the Industrial Court, Mumbai in Complaint(ULP) No. 10 of 2014 is hereby quashed and set aside to the extent of the direction No. 2 issued

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in the operative order.

(iii) Rule is made absolute in the above terms.

(iv) The Writ Petition is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]