

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4907 OF 2019

(The Commissioner, Parbhani City Municipal Corporation, Parbhani
and another Vs. Saheb Yadavrao Rakshe (Rakase))

Mr.S.S.Bora, Advocate for the petitioners.

Mr.P.V.Barde, Advocate for respondent No.1.

Mr.N.T.Bhagat, AGP for respondent Nos. 2 and 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/06/2019

PER COURT :

1. The petitioner/Corporation is aggrieved by the judgment and award dated 10/01/2019 delivered by the Labour Court, Nanded by which Ref.(IDA) No.1/2018 has been allowed and by quashing the order of termination dated 19/09/2016, the petitioner/Corporation is directed to reinstate the respondent in service with continuity and full back wages.

2. The petitioner is directed to add the Director of Municipal Administration as respondent No.2 and the Urban Development Department, State of Maharashtra through its Principal Secretary as respondent No.3. Addition be carried out forthwith. The learned AGP causes an appearance on behalf of these 2 authorities.

3. The learned Advocate for the petitioner/Corporation points out that the proposal of the respondent was forwarded for seeking regularization as he was working on daily wages as a "safai kamgar" from 04/10/1993. The proposal forwarded by the petitioner dated 28/03/2018 also indicates that it was mentioned that the respondent/workman was relieved from employment as he had completed 55 years as a daily wager. The dispute as to whether a daily wager would work till the age of 55 as against a regular class IV employee, whose retirement age is 60 years, is a subject matter of WP No.4424/2017, which is pending before this Court.

4. Learned Advocate for the petitioner further points out the communication dated 26/09/2018, which is a reminder to the department of Urban Development, Mantralaya that those 96 workers, who had worked as daily wagers as safai kamgar in between 11/03/1993 till 27/03/2000, can be granted regularization. He further indicates from an earlier communication dated 01/06/2016 vide which a reminder was forwarded to the Urban Development Department to regularize such daily wagers who have been working in between 11/03/1993 to 27/03/2000. In the list of safai kamgars working on daily wages, the name of the respondent is at Sr.No.15. He, therefore, submits that the Municipal Corporation has no bias or

prejudice against the respondent. There can be no allegation that the petitioner is indulging in "pick and choose" policy. The petitioner cannot act on its own and is guided by the dictates of the Urban Development Department, State of Maharashtra.

5. He then points out the communication dated 15/12/2018 received from the Desk Officer, Urban Development Department, Mantralaya addressed to the Commissioner of the petitioner, that those daily wagers who are working on and after 10/03/1993 and who are still in employment, can be granted regularization. He submits that, as a consequence of the said communication, the petitioner has been restrained by the State Government from considering the case of the respondent/workman.

6. I find from the record that the Corporation has completely mis-handled the case of this respondent/workman. The Director of Municipal Administration, State of Maharashtra, issued a letter to all the Chief Officers of various Municipal Councils on 22/08/2006 directing that those daily wagers, who have completed 55 years of service, should be removed from employment. The petitioner, then a Municipal Council, got converted into a Municipal Corporation subsequently. It is in this backdrop that some of the workers were

terminated and they approached the Labour Court through reference cases. Several of such daily wagers have secured protective orders from the Labour Court and some, as like the respondent herein, have succeeded before the Labour Court as a distinction cannot be made between daily wagers and permanent employees concerning the age of retirement. The petitioner/Corporation has reinstated several such workmen, who have been protected by the Labour Court/Industrial Court, as the case may be.

7. I find from a communication addressed by the petitioner/Corporation dated 28/03/2018 to the Principal Secretary, Urban Development Department, Mantralaya that there were 355 positions of safai kamgar in the Class IV category. 239 have to be filled in by direct recruitment and there are 116 positions vacant.

8. Considering the above, it is quite clear that the respondent was working from 04/10/1993 till 30/09/2016. He, therefore, falls in the service band of 11/03/1993 to 27/03/2000, who were declared to be eligible for regularization by the Urban Development Department. A recent GR dated 05/02/2019 would also indicate that these workmen would be eligible for regularization.

9. It is, therefore, obvious that the respondent is one such unfortunate daily wager, whose case was not appropriately considered by the Urban Development Department and on account of a cavalier order passed by the Director of Municipal Administration dated 22/08/2006, several such daily wagers have been terminated from service upon completing 55 years of age. This runs counter to the longstanding practice of the Urban Development Department, in so far as the petitioner/Corporation is concerned, that those who have been working from 11/03/1993 till 27/03/2000, would be eligible for regularization. The order dated 22/08/2006 has therefore become counter productive and has given rise to a large quantity of litigation.

10. In view of the above, I deem it appropriate to direct the petitioner/Corporation to re-instate the respondent forthwith and forward his proposal, pursuant to the circulars and the government resolutions applicable which are referred to hereinabove, for his regularization. Such a proposal shall be sent within 3 weeks from today and the Urban Development Department shall decide the same by granting regularization to the respondent within 6 weeks.

11. Learned Advocate for the respondent submits on instructions

that since he would be attaining the age of 60 years within a period of about 18 months, as a good will gesture, he agrees to waive his back wages from the date of his disengagement, which is 30/09/2016, if the petitioner reinstates the respondent on or before 15/07/2019. I find such gesture to be appreciable since the Municipal Corporation have always been in financial stringency.

12. It is made clear that these directions shall be implemented by the petitioner and respondent Nos. 2 and 3 with utmost urgency. The circular issued by respondent No.2 dated 09/04/2019 setting forth a timetable for completing the process of regularization of daily wagers, shall not be an impediment to the extent of respondent No.1/employee and respondent No.2 is at liberty to include respondent No.1/workman in the said schedule for regularization.

13. Needless to state, after the respondent is regularized in employment, he would be entitled to continuity in service and retiral/pensionary benefits keeping in view that he has been working from 04/10/1993. This petition is, therefore, partly allowed to the extent of the back wages in view of the statement made by respondent No.1/workman.

14. The parties shall act upon the printout copy of this order obtained from the official website of the Bombay High Court.

(Ravindra V.Ghuge, J.)