

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 449 OF 2006

YOGITA RAMESH GHODKE
VERSUS
THE MUNICIPAL CORPORATION, DHULE

Advocate for Petitioner : Mr. N.L. Choudhary.
Advocate for Respondent : Mr. A.S. Sawant.

CORAM : RAVINDRA V. GHUGE, J.
Dated : February 12, 2019

PER COURT :

1. I have heard the strenuous submissions of the learned advocates for the respective sides. A peculiar situation emerges from the litigation initiated by this petitioner in the Labour Court. The sequence of events are set out herein below :

(a) The present petitioner Yogita along with another co-worker Gopal had filed Complaints (ULP) Nos. 330 and 329/1997, respectively, before the Labour Court at Dhule.

(b) The identical contention of both these complainants was that they were working as Clerks in the Water Supply Division since 1995, and in the Ayurvedic dispensary from 1996, respectively.

(c) By a common judgment delivered by the Labour Court, dated 15.03.2003, the oral termination of both these workers was set aside and both were granted

reinstatement in view of their oral appointments. Back wages were, however, refused.

(d) Owing to interim relief granted by the Labour Court, both Yogita and Gopal were reinstated by the respondent/Corporation.

(e) The Corporation preferred a common Revision (ULP) No. 149/2004 (Old No. 72/2003) before the Industrial Court, under Section 44 of the MRTU and PULP Act, 1957.

(f) By the judgment of the Industrial Court dated 02.08.2005, the common judgment of the Labour Court was quashed and set aside and both the ULP complaints filed by Yogita and Gopal were dismissed.

(g) Both were, therefore, discontinued.

(h) Yogita preferred this present Writ Petition No. 449/2006 before this Court which was earlier dismissed by a detailed speaking order dated 06.09.2007.

(i) Gopal approached this Court in Writ Petition No. 446/2006 and by judgment dated 18.10.2007, delivered by a co-ordinate bench of this Court, the said petition was allowed and the judgment of the Industrial Court dated 02.08.2005, was quashed and set aside and the order of reinstatement by the Labour Court was restored.

(j) The Corporation approached the Hon'ble Apex

Court for challenging the judgment dated 18.10.2007, in favour of Gopal and the SLP was dismissed by order dated 07.12.2009 with the observations : "*The Special Leave Petition is dismissed*".

(k) Yogita, therefore, approached this Court in Review Application No. 144/2013 and this Court (Coram : Nitin W. Sambre, J.) observed that judicial discipline warrants review, in his order dated 17.11.2017, which reads as under :

" *Heard Shri Choudhari, learned counsel for the applicant.*

2. *The applicant is seeking review of the judgment dated 6th September 2007 passed in WP No.449/2006 on the ground that similarly placed employees preferred Writ Petition No.446 of 2006 against the present respondent, which was allowed on 2006 against the present respondent, which was allowed on 18th October 2007, against which Petition for Special Leave to Appeal No.244473 of 2007 (Civil) is dismissed. As such, the judgment dated 18/10/0007 stands confirmed.*

3. *In the wake of above, the learned counsel for the applicant submits that on the same set of facts, against the same respondent, there are two contradictory judgments*

governing the field. As such, judicial discipline warrants review.

4. *Shri Amol Sawant, learned counsel for respondent seeks time.*

5. *In view of the fact that application is pending since 2013, by way of last chance, the matter is adjourned to 11th December 2017, so as to enable the learned counsel for respondent to file reply."*

(l) When the Review Petition came up before this Court, as the earlier learned Judge was not available at the Aurangabad Bench, this Court noted the observations in paragraph No. 3 of the said order and therefore, the review application was allowed.

(m) Gopal is now said to be reinstated as a temporary Clerk with the same Corporation, in view of the facts recorded as above and he is working for the last 12 years.

(n) Yogita is now not in employment for the last 14 years.

2. The Hon'ble Apex Court has delivered judgments in cases where employees have worked temporarily and intermittently for two to four years and are out of employment for 10 to 15 or more years, by granting compensation of Rs. 40,000/- to Rs. 50,000/- per year of

service put in by those employees. Some are the following judgments :

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal [2013 LLR 1009],
2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136]*,
3. *BSNL Vs. Man Singh [(2012) 1 SCC 558] and*
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327]*.

3. This petitioner Yogita contends that she has worked in temporary employment in between 1995 to 2005. Learned counsel for the petitioner submits, on instructions, that he would prefer to get temporary employment as like Gopal.

4. The Hon'ble Apex Court has settled the law in the following cases that mere completion of 240 days in an employment in a public sector undertaking or state instrumentalities, would not be a ground for regularization or reinstatement, in the absence of a permanent sanctioned post :

1. *The State of Bihar and others Vs. Kirti Narayan Prasad [2018 (15) SCALE 352]*
2. *Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1]*,
3. *State of Orissa and another Vs. Mamata Mohanty [(2011) 3 SCC 436]*.

5. Considering the above referred judgments of the Hon'ble Apex Court, it is crystal clear that an oral appointment to the post of Clerk in the Class III position in public employment, without the due procedure of recruitment being followed, cannot be sustained. It is also settled law that the deeming fiction of completion of 240 days under Standing Order 4-C, entitling a person to get the benefit of Standing Order 4-D under the Model Standing Order framed under the Industrial Employments (Standing Orders) Act, 1946, would not apply to state instrumentalities and where issue of public employment is involved. It is equally well settled law that if there is no sanctioned vacant posts, there cannot be an order of reinstatement of a temporary employee on a non-existing post.

6. It is quite ironical that in the case of Gopal, a co-ordinate Bench of this Court delivered a judgment on 18.10.2007 in favour of Gopal, when the same judgment was sustained by another co-ordinate Bench prior there to on 06.09.2007, in the case of Yogita. It is, however, noteworthy that the order passed by this Court on 06.07.2007, was not pointed out to the learned Judge who delivered the judgment on 18.10.2007. The Corporation was unaware of the order dated 06.09.2007, because this Court dismissed the petition filed by Yogita without issuing notice to the Corporation.

7. The learned advocate for the petitioner/Yogita has strenuously prayed that the view taken by this Court in the judgment of Gopal may also be followed. With great respect to the judgment dated 18.10.2007, I am unable to accept the same view considering the law laid down by the Hon'ble Apex Court in the matter of Secretary, State of Karnataka Vs. Umadevi and Others [(2006) 4 SCC 11], and in view of the above referred judgment whereby completion of 240 days would not give a right to an employee for reinstatement and that to as a temporary employment working intermittently on a Class III post.

8. Insofar as whether in such Municipal Councils/Corporations, the temporary worker would get rights of employment on completion of 240 days, fell for consideration before the learned Division Bench of this Court at Nagpur, in the matter of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016 (6) Mh.L.J. 867]. Two learned Single Judges at Nagpur had taken contrary views and hence the matter was referred to the learned Division Bench. It was concluded that mere completion of 240 days would not give a right to an employee to seek continues employment in a Corporation or a Municipal Council, or for that reason a State instrumentality.

9. In view of the above, I am unable to grant the same relief to

this petitioner Yogita as was granted to Gopal.

10. I find that, in the peculiar facts and circumstances, Yogita could be at liberty to approach the respondent/Municipal Corporation and pray for allotment of temporary work of a clerk, citing the case of Gopal. The Municipal Corporation may consider the case of Yogita sympathetically in view of the above stated peculiar facts and circumstances, at par with Gopal. It would be difficult for this Court to direct the Municipal Corporation to absorb Yogita, since it is not known as to whether they have permanent vacancies, in as much as, Yogita has put in only ten years in employment and is unemployed in the last 14 years. The learned counsel for the Municipal Corporation submits that they have less sanctioned posts and a large strength of temporary employment and contractual post. It is, therefore, left to the Corporation to deal with the request of Yogita, sympathetically and on parity with Gopal.

11. This petition, is therefore, disposed of. Rule is discharged.

(RAVINDRA V. GHUGE, J.)