

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5500 OF 2001**

1. Maharashtra Water Supply & Sewerage Board, Bombay. .. Petitioner

2. The Supdt. Engineer
Environmental Engineering, Jalgaon

3. Executive Engineer
Environmental Engineering, Jalgaon

Vs.

1. Shri Gautam Trymbak Yashod Malegaon, Nasik .. Respondents

2. Member, Industrial Court, Nasik

Ms. Neeta Karnik for the Petitioner.

None for the Respondent.

CORAM : A.K. MENON, J.

DATED : 9th JANUARY, 2019.

P.C. ,

1. Called for final hearing. This petition challenges an order dated 27th February, 2001 passed in Complaint (ULP) No. 91 of 1994 by Member, Industrial Court at Nashik. By the said impugned order the Court declared that the petitioner had committed unfair labour practices under Item nos. 5 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The petitioners were directed to appointment the respondent no. 1 to the post of Karkoon effective 3rd July, 1982 and correct the seniority list accordingly.

2. On behalf of the petitioners it is submitted that the appointment of the respondent was not a regular appointment but pursuant to a scheme declared by the Kalelkar Award under which the person is appointed initially on daily wages. If he completes five years continuous services he is enrolled in what is known as a 'Converted Regular Temporary Establishment' ("CRT"). If he continues in CRT for a further period of five years continuously, he becomes eligible to be brought in as permanent employee under the Converted Regular Permanent Establishment ("CRP").

3. In the case at hand, the respondent had worked continuously for five years and became eligible to be enrolled in the CRP. His initial appointment was on 1st May, 1975. On or about 4th February, 1994 the complaint came to be filed in which he sought a declaration that the petitioners had engaged in unfair labour practices and a direction to give deemed promotion to the post of "Clerk" with the appropriate pay-scale as enhanced by the IVth Pay Commission. A further direction that his appointment should be treated as prior to three other persons Shri Paithankar, Shri Joshi and Shri Nikhumbh. According to Ms. Karnik the complaint was not maintainable since there was no route for promotion available under the scheme proposed by Kalelkar Award and in such event there was no question of appointing him as Clerk.

4. Ms. Karnik invited my attention to the case of the petitioner in the witness statement before the Industrial Court where petitioner have

contended that respondent was not entitled to be promoted to the post of clerk. Furthermore it is stated that no employee on the CRT can expect to be considered for the post of clerk. There was a post of 'Karkoon' which is different from post of 'Clerk'. The rules for recruitment of these two posts are stated to be different and person appointed on CRP is eligible to be appointed as Karkoon but not as a Clerk because the Clerk could be appointed only if he was selected through the employment exchange route and he clears the interview.

5. As far as post of Karkoon is concerned, it is contended that under the Kalekar Award the post of Karkoon was never a promotional post. On a query from the Court as to the difference between post of Karkoon and Junior Clerk Ms. Karnik invited my attention to the Schedule of posts attached to the scheme of Kalekar Award as annexed to the written statement. Item no. 43 refers to 'Junior Clerk' and Item no. 44 refers to 'Karkoon'. Both are Class III posts and the pay scale is also identical. The only difference is the mode of appointment. In the case of Junior Clerk it is more detailed. The other difference is in the nature of duties. However, both report to the Superintendent. Making reference to the Schedule Ms. Karnik submitted that the impugned order has proceeded on an incorrect basis .

6. The Industrial Court framed three issues. It held that the complainant had proved commission of unfair labour practices under Items 5 and 9 and

negated the petitioner's contention that complaint was not maintainable. In the issue pertaining to complainant entitlement was answered in the affirmative. The impugned order deals with the pleading and the evidence led before the Court in which it is recorded that there is no dispute that Shri Paithankar, Shri Joshi and Shri Nikhumbh were junior to the complainant yet they were given the post of Karkoon in the year 1982 . The impugned order also records in paragraph 13 an admission on the part of the petitioners witness Mr. Vilas Pandit Rakshe, Senior Clerk, that the office of the respondent's department had recommended the case of the respondent for promotion having realised injustice caused to him. He further admitted that the department agreed to give him promotion from 3rd July, 1982 if the respondent gave up the claim for arrears. Ms. Karnik submitted that said witness had no authority to make that statement and that disciplinary action was taken against him.

7. Be that as it may the impugned order has proceeded on the basis of the records, the pleadings and deposition of the petitioner's own witness, the submission that the witness had no authority to make that admission is not one that can be accepted. Incidentally there is nothing on record to show that the admission by the witness was not a correct deposition but it is only challenged on the basis of the witnesses authority to make such a statement. Clearly such a contention cannot be accepted.. One other issue which came

up in the course of submissions today is the process by which Shri Paithankar, Shri Joshi and Shri Nikhumbh all of whom belong to open category were appointed to the post of Karkoon although they were also brought in on the CRT route and admittedly without going through the employment exchange. There is nothing on record to explain these discrepancies. Ms. Karnik was unable to justify appointment of these three persons except by stating that they were holding higher educational qualification of SSC and were more skilled than the respondent. Nothing in the evidence supports this contention and this submission now advanced.

8. In the circumstances, I find that the impugned order is justifiable by the records and the evidence led in the case by the parties. There is nothing perverse or illegal about the impugned order and it does not call for interference. In the result the challenge fails and I pass the following order :

- (i) Writ Petition is dismissed. Rule is discharged.
- (ii) No costs.

(A.K. MENON,J.)