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D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9698 OF 2018

Zilla Parishad, Satara
Through its Chief Executive
Officer & Anr.

..... Petitioners

V/s

Ramesh Sahebrao Khude

..... Respondent.

Mr. Uday P. Warunjikar for the Petitioner.

Mr. Surendra Kumar Choudhari for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : AUGUST 14, 2019

P.C. :

1] Petition can be conveniently disposed of by consent of parties at the stage of admission.

2] Complaint (ULP) No.78 of 2008 was preferred by the Respondent-employee, alleging violation of Items 5, 6, 9 and 10 of Schedule-IV of the Maharashtra Recognition of the Trade Unions and Prevention of Unfair Labour Practices Act, 1971. In the said complaint, an issue as regards engagement of the Petitioner in

unfair labour practice was framed and same came to be partly answered against the present Petitioner-employer vide order dated 3/5/2013. The learned Industrial Court in the said order has observed that the Respondent was deprived from getting benefit of permanency in view of the breach of the statutory provisions at the behest of the Petitioner. As a consequence, status of permanency came to be conferred on the Respondent-employee.

3] During pendency of the said complaint, Petitioner, on 25/7/2008, served an order of termination on the Respondent-employee which has prompted him to prefer Complaint (ULP) No. 49 of 2009 which came to be partly allowed on 29/10/2012 with direction that the claim for employment of the Respondent-employee be considered while filling up of vacancies for Class-IV category. It was also directed that services rendered by the Respondent-employee as a part time sweeper from 1987 to 2007 be taken into account.

4] Feeling aggrieved, Petitioner, so also the Respondent, preferred Revision before the Industrial Court. Vide impugned order dated 19/12/2015, Industrial Court has allowed the claim of the Respondent-employee in toto and directed the present

Petitioner to reinstate the Respondent-employee in service as a sweeper with continuity in service with full back-wages. It is also declared that benefit of circular dated 6/7/2005 be given to the Respondent-employee. As such this Petition.

5] While questioning the aforesaid orders, submissions are, pursuant to the scheme of the State Government, the Veterinary Dispensary in which the Respondent was appointed as a part time sweeper was closed down. According to the Petitioner, as far as possible, Petitioner has accommodated the Respondent-employee by shifting him wherever vacancy was available as could be inferred from the order dated 5/5/2006. The learned Counsel would then urge that there is no sanctioned post or clear vacancy available against which Petitioner, as a part-time sweeper, can be accommodated. He would then urge that though the State Government was necessary party to the proceedings before the Labour and Industrial Court, Respondent-employee has not impleaded the same and that being so, the orders impugned suffer from non-joiner of necessary party and as such, are liable to be quashed and set aside.

6] While countering the aforesaid submissions, the learned

Counsel for the Respondent-employee supported the orders impugned. Apart from the issue of limitation, submissions are, that once other staff members who were working with the Petitioner were accommodated by the Petitioner, the least that was expected from the Petitioner was to accommodate the Respondent-employee on similar terms at the relevant time. As such, he sought dismissal.

7] Considered the rival submissions.

8] The impugned order of learned Industrial Court was delivered on 3/5/2013, conferring permanency on the Respondent-employee, which for the first time came to be questioned before this Court almost after a period of more than five years.

9] Apart from above, the order of the Industrial Court dated 19/12/2015 is also questioned before this Court after a period of more than three and half years. There are no convincing explanation coming forward from the Petitioner for questioning these two orders at such a belated stage. The only ground which the learned Counsel for the Petitioner could canvass is, the Chief Executive Officer of the Petitioner is now facing contempt

proceedings, as such it is for the first time the fact of existence of aforesaid two orders adverse to the interest of Zilla Parishad were brought to the notice of the Senior Officers.

10] Though submissions of the learned Counsel for the Petitioner appear to be very attractive, however, there is no substance in the said submissions. The order dated 3/5/2013, conferring permanency so also the order passed in Revision by Industrial Court on 19/12/2015 were after hearing the Petitioner and after considering the evidence on record.

11] Apart from above, the fact remains that the Petitioner has accommodated other employees who were working with the Petitioner in the very same Veterinary Dispensary where Respondent was also posted as a sweeper. Once the Petitioner has accommodated by effecting transfer of the services of other employees who were working with it on the same establishment on which the Respondent was working, the contention that the services of the Respondent were not permissible to be accommodated at any other place, he being a part-time worker employed on contract basis, does not hold any substance. Once findings are recorded in favour of the Respondent-employee,

conferring permanency in 2013, the fact remains that termination of Respondent-employee that too without conducting any inquiry and in absence of convincing explanation to that effect, in my opinion, no fault could be noticed in the order of Industrial Tribunal. That being so, no case for interference is made out. Petition fails and the same stands dismissed.

(NITIN W.SAMBRE, J.)