

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO.35400 OF 2018**

Prahlad Dada Khandale .. Petitioner.

Vs.

Executive Engineer,
Construction Department, Pune .. Respondent.

Mr.Ameya Tamhane for the Petitioner.

None for the Respondent.

CORAM : A.K. MENON, J.

DATED : 16TH JANUARY, 2019

P.C. :

1. The petition challenges the judgment and order dated 12th October, 2018 passed by the Industrial Court, Pune in Complaint (ULP) No. alleging unfair labour practices under items 5 and 9 of Schedule IV of the MRTU & PULP Act. It is contention of the petitioner that he was entitled to be promoted to the post of “Mistry” and that a person junior to him has been promoted to this post. In the complaint in paragraph 6, reference was made to several persons who were said to be junior to the petitioner and who have been promoted, however, except for a bare statement in the pleadings that certain employees junior to him have been promoted the evidence is silent on this aspect.
2. The findings of the Industrial Court after considering all evidence

and documents filed by the petitioner from Exhibit U-11 to U-13, which included circulars issued by the Government, the promotional list and order of the Labour Court, after setting out factual background pertaining to engagement of the petitioner. It appears that the petitioner's services were terminated on 20th May, 1986 and thereafter number of proceedings were filed before the Labour Court and the Industrial Court as a result of which the petitioner has succeeded and was reinstated in its original post as "Chowkidar" in the resettlement department. Upon closure of the department no such post of Chowkidar was available resulting in the petitioner being absorbed in the post of "Mail Kamgar" which was equivalent to post of Chowkidar. There is no dispute as to fact that "Mail Kamgar" was equivalent to post of "Chowkidar". However, it appears that the petitioner once again filed complaint (ULP) No.111 of 1989 objecting to his being continued as Mail Kamgar and ultimately the Industrial Court had issued a certificate for payment of Rs.1,62,500/- and costs. The recovery certificate has since been complied with and the plaintiff was granted permanency with effect from 1st November, 1990 after taking sanction from the appropriate authority.

3. The grievance thereafter is that the petitioner was entitled to be appointed as "Mistry cum Mukadam" and failure to do so has resulted in an unfair labour practice particularly since the persons junior to

him have been so appointed. The impugned judgment has considered various documents, evidence led and has come to conclusion that the complainant was appointed on a permanent basis since 1st January, 1990 on the post of "Mail Kamgar" from which there is no promotional post. This aspect was not called into question and therefore, the Industrial Court found that none of their employees had been promoted by superceding the petitioner especially since no such post of "Chowkidar cum Mukadam" was in existence.

4. The Court has observed that Chowkidar and Mukadam were two different posts and the same are not equivalent and the petitioner was already a permanent employee. All orders passed against the respondents in earlier proceedings have been complied with. In these set of circumstances the Industrial Court has clearly observed that there is no favoritism and partiality to one set of workers nor there is any failure to implement award, settlement or agreement.
5. In the circumstances I am unable to find any perversity or illegality that afflicts the impugned order. Hence the challenge fails and following order is passed :
 - (i) Petition is dismissed.
 - (ii) No costs.

(A.K. MENON,J.)