

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5512/2011

Nagpur Municipal Corporation ..VS.. Rashtriya Nagpur Corporation Employees Association
AND

WRIT PETITION NO.2433/2019

Nagpur Municipal Corporation ..VS.. Rashtriya Nagpur Corporation Employees Association

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J. B. Kasat, Advocate for the petitioner
Shri V. P. Marpakwar, Advocate for the respondent

CORAM : Z.A.HAQ, J.
DATED : 17/06/2019

Heard.

2] These petitions are being disposed by common judgment as the controversy involved in both petitions is same.

3] The respondent-Union had filed complaint ULP No. 197 of 2004 under Section 28 read with Item No. 2 of Schedule II and Item Nos. 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (For short 'the Act of 1971') complaining that the Nagpur Municipal Corporation (present petitioner) indulged in unfair labor practice by not regularizing the services of its 39 members whose names were given in the complaint, though those members were in the employment of the Corporation continuously for period ranging between 3 years to 15 years. The Corporation raised the defence

that the 39 employees were engaged on daily wages as Safai Kamgar, however, as they were having driving licence they were asked to work as driver in Health Department of Corporation, and those 39 employees were not appointed by taking recourse to the prescribed procedure and therefore, they were not entitled to claim regularization of their services.

4] After conducting the trial, the Industrial Court held that the Corporation indulged in unfair labour practice by not regularizing the services of the 39 employees and directed the Corporation to regularize their services and to make available to them all the benefits and emoluments. This order passed by the Industrial Court is challenged by the Corporation in Writ Petition No. 5512 of 2011.

5] The respondent-Union filed another complaint ULP No. 377 of 2011 before the Industrial Court making similar grievance about non regularization of services of 37 employees. After conducting the trial and assessing the evidence on record the Industrial Court found that out of the 37 employees whose names were given in the complaint, 23 employees were entitled for relief and directed the Corporation to regularize their services in the posts of driver and to make available to them all the benefits and emoluments. The Industrial Court has refused relief to the other 14 employees as it found that they had not been able to establish their claim. This

order passed by the Industrial Court granting relief to 23 employees is challenged by the Corporation in Writ Petition No. 2433 of 2019.

6] Learned Advocate for the petitioner-Corporation submitted that the Industrial Court has committed gross error by directing the Corporation to regularize the services of the employees in the posts of driver, overlooking the fact that those employees were never appointed in the posts of driver. According to the Corporation, the employees in whose favour relief is granted by the Industrial Court were engaged as substitute Safai Kamgars and that too without following any procedure and as they were having driving licence they were asked to work as drivers and in these facts the Industrial Court has committed an error by directing regularization of services of those employees. To support the submission that such appointees cannot claim regularization of their services in the posts in which they had been working, learned Advocate for the petitioner-Corporation relied on the following judgments:

(i) Judgment given by the Hon'ble Supreme Court in the case of *Mahendra L. Jain and Ors. .v/s. Indore Development Authority & Ors.* reported in **2005 I CLR 9**.

(ii) Judgment given by this Court in the case of *State of Maharashtra and Anr. .v/s. Pandurang Sitaram Jadhav* reported in **2008 III CLR 151**.

7] It is further submitted that some of the employees, whose services are to be regularized as per the impugned order, are not having the qualifications required for being appointed in the posts of driver. This submission is required to be recorded and rejected. The petitioner-Corporation had not raised this ground in the reply filed by it before the Industrial Court. Though it is submitted that there is no such rule prescribing the qualifications for the posts of driver, the Corporation relies on the resolution No. 31 dated 12/04/1976 which lays down that the person seeking appointment on the post of driver should have passed 8th standard. The copy of resolution is not produced on record. There are no pleadings as to whether the resolution is being acted upon and all other persons who are appointed in the posts of driver have passed 8th standard. Hence, challenge to the impugned order on this ground cannot be considered.

8] To support the impugned orders, learned Advocate for the Union has relied on various judgments. Suffice to refer the judgment given by the Hon'ble Supreme Court in the case of *Maharashtra State Road Transport Corporation & Anr. .v/s. Casteribe Rajya P. Karmachari Sanghatana* reported in **2009 III CLR 262**. I find that the proposition laid down in this judgment regarding the protection of labour law to such employee, governs the controversy. In my view, the conclusions of

the Industrial Court are in consonance with the proposition laid down in the judgment given in the case of *Maharashtra State Road Transport Corporation & Anr. .v/s. Casteribe Rajya P. Karmachari Sanghatana* (supra).

In view of the above, I see no reason to interfere with the impugned orders. The writ petitions are dismissed. In the circumstances, the parties to bear their own costs.

(Z.A.HAQ, J.)

Namrata