

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4071 OF 2019

The Chief Officer, Nagar Parishad, Achalpur

-vs-

Abdul Raafique Shaikh Kasam, Paratwada and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. A. Puranik, Advocate for petitioner.

Shri N. R. Saboo, Advocate for respondent No.1

CORAM : A. S. CHANDURKAR, J.

DATE : October 15, 2019

The challenge raised in the present writ petition is to the judgment of the Industrial Court dated 11/02/2019 whereby the complaint filed by the respondent No.1 herein has been partly allowed and the Municipal Council has been directed to pay wages to the respondent No.1 on the post of Recovery Clerk since 1992.

2. It is the case of the respondent No.1 that he was engaged as a Peon with the Municipal Council from 08/05/1985. However on the directions issued by the Municipal Council he was doing the work of Recovery Clerk. Since he was not being paid wages admissible for that post, he filed a complaint seeking promotion on the post of Clerk and also a direction that he be paid wages on the post of Recovery Clerk.

In the written statement it was pleaded that the respondent No.1 was not duly qualified to be promoted on the post of Recovery Clerk. He was discharging duties as per the directions issued by the Municipal Council.

3. Parties led evidence before the Industrial Court and after considering the same the learned Member of the Industrial Court found from the material on record that the respondent No.1 though appointed as a Peon was working as a Recovery Clerk since the year 1992. By the impugned order the relief of promotion was refused but a direction was issued to pay wages to the respondent No.1 on the post of Recovery Clerk. That order is challenged in the present writ petition.

4. Shri S. A. Puranik, learned counsel for the petitioner submits that there was no material on record to indicate that the respondent No.1 was entitled to receive wages on the post of Recovery Clerk. He was appointed on the post of Peon and he was also given time bound promotion on that post. He referred to the evidence of the witnesses examined by the Municipal Council as well as the evidence led by the respondent No.1 to submit that the entire complaint ought to have been dismissed. Since the post of

Recovery Clerk was a Class-III post while the post of Peon was of Class-IV and as there were other seniors still working as Peons, no relief could have been granted to the respondent No.1. Hence the impugned order was liable to be set aside.

4. On the other hand Shri N. R. Saboo, learned counsel for the respondent No.1 submitted that the witness examined by the Municipal Council had clearly admitted that since 1992 the complainant was working as a Recovery Clerk but he was not paid wages for that post. He referred to the decision in *Municipal Council, Achalpur vs. Tolaram Tilakdas Meghwani and ors. 2014(5) Mh.L.J. 944* and submitted that similar relief granted to an employee from the same Municipal Council on identical grounds was maintained by this Court. According to him relief of promotion was refused by the Industrial Court and the respondent No.1 has accepted that part of order.

5. On considering the material on record and after perusing the evidence recorded it is clear from the cross-examination of the witness examined at Exhibit-169 that the respondent No.1 was working as a Recovery Clerk since 1992 but was not paid wages for that post. The Industrial Court has taken into consideration

various documents at Exhibits-123 and 57 by which the respondent No.1 and two others were nominated as Recovery Clerks. The tax recovery registers at Exhibits-74 to 86 also indicated various entries in the handwriting of the respondent No.1 which pointed out the collection of tax by him. It is thus seen that the conclusion recorded by the Industrial Court that the respondent No.1 was working as a Recovery Clerk since 1992 is based on material available on record.

6. The decision in *Municipal Council, Achalpur* (supra) indicates granting of similar relief to a Peon who was directed to work as Octroi Clerk. The relief granted was on the ground that the demand was for wages for work done. That adjudication was accepted by the petitioner. In that view of the matter I do not find any reason to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE