

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION 7445 OF 2004

Taloda Nagar Parishad,
Through its Chief Officer,
Taloda, Dist. Nandurbar

Petitioner
(Orig. Respondent)

versus

- 1 Anil S/o Magan Suryawanshi,
Age: 30 years, Occ: Nil,
R/o Motha Maliwada, Taloda,
Tq. Taloda, Dist. Nandurbar

- 2 The State of Maharashtra
through the Collector,
Nandurbar, Dist. Nandurbar
- Respondents
(Respondent No.1 – Original complainant)

WITH
WRIT PETITION 7446 OF 2004

Taloda Nagar Parishad,
Through its Chief Officer,
Taloda, Dist. Nandurbar

Petitioner
(Orig. Respondent)

versus

- 1 Jagdish S/O Laxman Mali
Age: 35 years, Occ: Nil,
R/o Kakasheth lane, Taloda,
Tq. Taloda, Dist. Nandurbar

- 2 The State of Maharashtra
through the Collector,
Nandurbar, Dist. Nandurbar
- Respondents
(Respondent No.1 – Original complainant)

WITH
WRIT PETITION 7447 OF 2004

Taloda Nagar Parishad,
Through its Chief Officer,
Taloda, Dist. Nandurbar

Petitioner
(Orig. Respondent)

versus

- 1 Kiran S/o Devidas Magare
Age: 40 years, Occ: Nil,
R/o College Road,
Near Chaufuli, Taloda,
Tq. Taloda, Dist. Nandurbar

1-A Sapna Kiran Magare,
Age: 29 years, occu: nil

1-B Yamini Kiran Magre
Age: 6 years, occu: education

R/o College Road, Near Chaufuli,
Taloda, Tq. Taloda, Dist. Nandurbar

2 The State of Maharashtra
through the Collector,
Nandurbar, Dist. Nandurbar

Respondents
(Respondent No.1 – Original
complainant)

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Mr. G.D. Jain advocate for the petitioner
Mr. A.R. Syed advocate h/f Mr. S.P. Brahme
advocate for respondent No.1
Mr. S.K. Tambe, AGP for respondent No.2.

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CORAM: ROHIT BABAN DEO, J.

Reserved on : 7.2.2020

Pronounced on : 11.2.2020

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COMMON JUDGMENT:

1 These petitions preferred by Taloda Nagar Parishad challenging the concurrent views of the Labour Court and the Industrial Court that the termination of the respondents is illegal, involve identical facts and questions of law and are therefore heard and decided by this common Judgment.

2 Writ Petitions 7445 and 7446 of 2004 are preferred by the Nagar Parishad challenging the common Judgment and order dated 20.12.2002 rendered by the Labour Court Dhule whereby Complaint (ULP) 57/2002 instituted by Shri Anil Magan

Suryawanshi and Complaint ULP. 59/2002 instituted by Shri Jagadish Laxman Mali are partly allowed. The termination dated 25.6.2002 is held an unfair labour practice and the Nagar Parishad is directed to reinstate the employees in service without back wages. The Nagar Parishad challenged the said Judgment & order in Revision (ULP).192/2004 and Revision (ULP)193/2004 which are dismissed by the Industrial Court, Dhule.

3 Writ petition 7447/2004 is also preferred by the Nagar Parishad, Taloda challenging the Judgment & order rendered by the Labour Court, Dhule in Complaint (ULP)58/2002 dated 20.12.2002 confirmed by the Judgment & Order rendered by the Industrial Court, Dhule in Revision (ULP)41/2003 dated 7.8.2004 whereby the Nagar Parishad is directed to reinstate employee Kiran Devidas Magare in service without back wages.

4 The facts which are common in the three petitions and to the extent the same are relevant are that vide resolution dated 31.3.2001 passed in the meeting of the General Board, Shri Jagadish Mali was appointed as a sweeper w.e.f. 1.4.2001 and vide resolution No.270 Shri Kiran Devidas Magare was appointed as a sweeper w.e.f. 1.4.2001. Shri Anil Suryawanshi was appointed as a sweeper in view of the resolution passed in the meeting of the general board dated 31.7.2001 w.e.f. 1.8.2001.

It is not in dispute that from the date of the appointment, the employees were in continuous employment of the Nagar Parishad and the employees put-in one calendar year continuous employment till their services were terminated w.e.f. 25.6.2002. It is not in dispute that the provisions of Section 25-F of the Industrial Disputes Act, 1947 (ID Act) were not followed, no compensation was offered, much less paid before termination and no enquiry was conducted.

5 The basis for termination was a letter received from the Collector, Nandurbar dated 8.4.2002, whereby the three resolutions vide which the employees were appointed, were suspended in purported exercise of powers under section 308(1) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (MMC Act for short).

6 The employees approached the Labour Court challenging the termination, *inter-alia* contending that the employees were irrefutably appointed in clear posts and that termination orders are passed in breach of provisions of the ID Act.

In rebuttal, the Nagar Parishad contended that the Collector, Nandurbar was pleased to suspend the resolutions on the basis of which the employees were appointed on the premise that the appointments are violative of the recommendations of the Lad Committee. The Nagar Parishad contended that the

Collector, Nandurbar is a necessary party. The Nagar Parishad further contended that the Collector received a complaint as regards the appointments and on the basis thereof, suspended the three resolutions. The Nagar Parishad contended that the appointment is backdoor entry and illegal. The Nagar Parishad further contended that since the appointments were illegal, it was not necessary to give an opportunity of hearing to the employees.

7 The parties did not lead oral evidence and rested their case in view of the admitted documents. The Labour Court recorded finding of fact that the employees completed more than 240 days in the preceding 12 months of the termination. The Labour Court observed that considering the reasons put forth by the Collector for suspending the resolutions, it was incumbent on the Nagar Parishad to give an opportunity of hearing to the employees. The Labour Court further noted that the action of the Collector is inchoate and there is no material on record to ascertain what was the ultimate fate of the suspension order.

The Labour Court recorded a finding that the Nagar Parishad failed to comply with the provisions of Section 25-F and 25-G of the ID Act and therefore, the termination is an unfair labour practice. Significantly, a finding is recorded and which issue is no more in dispute that the employees were appointed on clear and permanent post and not as a daily wager or casual

employee.

8 The Revisional Court was alive to the legal position that the jurisdiction under section 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) is extremely limited. The Revisional Court held that there is no patent error or illegality in the order of the Labour Court and dismissed the revisions.

9 The learned counsel for the petitioner Shri G.D. Jain has urged the said submissions which were urged before the Courts below. Shri Syed h/f Shri S.P. Brahme learned counsel for the employees would strongly rebut the said submissions. Broadly, the learned counsel for the Nagar Parishad emphasizes that the order of appointment was illegal and that in view of the suspension of the resolutions, the Nagar Parishad was statutorily bound to terminate the services of the employees.

Per contra, the learned counsel for the employees Shri Syed would submit that the action of the Collector of suspension of the resolutions is inchoate and no material is placed on record to show that the action has reached the logical end. The learned counsel would submit that, in any event, the termination is in breach of section 25-F of the ID Act and there is no reason for this Court to interfere with the concurrent orders.

10 One intervening development is significant. Vide order dated 30.3.2005, this Court issued Rule and directed that interim relief of status-quo shall continue to operate. The Nagar Parishad, vide resolution dated 350 passed in the general body meeting dated 28.4.2008 resolved to make work available to the employees on certain conditions. The employees were agreeable to work subject to the conditions in the resolution dated 28.4.2008. This Court passed the following order on 5.5.2008 in Civil Application 4205 of 2008 in Writ Petition 7445/2004:—

" 1) *Heard.*

2) *The learned counsel for the Municipal Council has placed on record a copy of Resolution No.350 passed by the General Body of the Municipal Council dated 28-4-2008. It is informed that, under the said Resolution the Municipal Council by majority resolved that as the work is available the applicant could be provided with the work subject to conditions mentioned in the Resolution i.e. (a) the applicant's reinstatement would be subject to the orders in the writ petition; (b) the applicant would not be entitled to receive any remuneration or wages as arrears of past service rendered by the applicant; and, (c) the applicant would be receiving salary and allowances from the date from which he resumes the work.*

3) *The learned counsel for the Municipal Council, on instructions, states that now the applicant could be provided with work as it is available. Learned counsel Shri. Brahme for the applicant accepts the statement and submitted that in tune with the resolution passed by the Municipal Council the applicant is ready to work.*

4) *In the light of the statement made across the Bar the order passed by this Court while admitting the writ petition on 30-3-2005 is modified. The Municipal Council is entitled to provide*

work to the applicant as per the resolution.

5) The civil application is disposed of."

It is not in dispute that the employees were reinstated and except the respondent-employee in Writ petition 7447/2004 Shri Kiran Devidas Magare who expired in the year 2012, the other two employees are working from 2008 till date.

11 In the light of the submission that the action of the Collector of suspending the resolutions was inchoate, it would be necessary to refer to the provisions of Section 308 of the MMC Act which reads thus:-

" SECTION 308 : Powers to suspend execution of orders and resolution of Council on certain grounds

(1) If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof.

(2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order, indicating therein the reasons for making it and also submit a report to the Director, along with a copy of such order.

(3) Within [thirty days] from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is

received by the Director within the time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.

(4) On receipt of such report from the Collector and the Council's statement referred to in sub-section (3), if any, the Director may [within a period of six months, from the receipt of such report or within such period beyond six months as may, on the request of the Director, be extended by the State Government,] rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force with or without modifications:

Provided that, the Director shall take into account the statement of a Council, if received, before such an order is made by him.

Amendment of section 308

In section 308 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:-

(1) If the Council or any Committee resolves contrary to provisions of this Act or any other law, or rules, bye-laws, or the Government directions, then it shall be the responsibility of the Chief Officer to send it to the Collector for suspension of execution of such a resolution or prohibition of doing thereof, within the period of three days from the receipt of the said resolution. The Collector shall decide on such proposal within the period of thirty days from the date of receipt of such proposal. If it remains undecided within the said period, then the Collector shall submit the report thereof to the Director within ten days and the decision of the Director thereon shall be final. In such case, appeal against the order of the Director shall lie to the State Government."

The statutory scheme is that the copy of the suspension order shall be forwarded by the Collector to the Nagar Parishad and a report shall be submitted to the Director. The Nagar

Parishad is entitled to forward a statement to the Director indicating that the order of the Collector should be rescinded, revised or modified and if no such statement is received by the Director within time, the Director shall presume that the council has no objection if the order of the Collector is confirmed.

The statutory scheme envisages that the order of the Collector shall be either rescinded or revised or modified or confirmed by the Director.

12 Nothing was placed on record either before the Labour Court or before the Industrial Court to indicate the fate of the order of suspension of the resolutions. In fact, the learned counsel for the Nagar Parishad has invited my attention to a communication dated 26.5.2011 addressed by the Chief Officer of the Nagar Parishad to the Director, seeking regularization of the services of the employees. However, neither the Nagar Parishad, nor the employees are in a position to enlighten this Court as to what transpired thereafter. Be that as it may, the view of the Labour Court that the action of suspension of the resolutions could not have automatically led to termination is reasonable. It is manifest that the Nagar Parishad acted in haste and although the action of the Collector of suspending the three resolutions was inchoate, the Nagar Parishad went ahead and immediately terminated the employees. The Nagar Parishad should have waited for the order of the Director.

The employees are working since June, 2008. Considering that the termination was in breach of the provisions of the ID Act and the fact that the employees are working since long in clear and permanent posts, I am not inclined to interfere with the concurrent orders, in writ jurisdiction.

13 The writ petitions are dismissed.

14 Rule is discharged.

(ROHIT BABAN DEO, J)

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