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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3905 OF 2019

Chandrakant Madhavrao Thorat	...Petitioner
vs	
The Commissioner, Nashik Municipal Corp.	...Respondent
.....	
Mr. Vaibhav Jagdale, for the Petitioner.	
Mr. Murlidhar L. Patil, for the Respondent.	

.....
CORAM : S.C. GUPTE, J.

DATED: 22 JANUARY, 2020

P.C. :

. Heard learned Counsel for the Petitioner.

2. This writ petition challenges an order passed by the Industrial Court at Mumbai on a complaint of unfair labour practice. The complaint was filed by the Petitioner herein under items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act ("Act"). The controversy concerned the services of the Petitioner with a health center maintained by the Respondent Municipal Corporation. The Petitioner joined the Respondent's services as a coach at its health center at Swatantryaveer Savarkar Swimming Pool, Triambak Road, Nashik, on 1 April 1996. He was made permanent and appointed as a life guard by an order passed by the Respondent on 17 May 2003. This order was to take effect from 1 May 2003. This order was as per an approval granted by the State

Government. From the year 2003 onwards, till about 2013, the Petitioner claims to have addressed various communications to the Respondent Corporation, voicing grievance concerning his appointment to the post of life guard; his claim was that he was entitled to be appointed in the post of instructor. The record indicates that there was only one post of instructor and that post was duly filled-in as far back as in the year 2003. The correspondence between the Respondent Corporation and the State Government, in this behalf, shows that there was a requisition from the former to the latter for creation of an additional post of 'instructor' in its health center so that the Petitioner could be appointed to the post, but that this sanction never came from the State Government.

3. On these facts, the labour court, in its impugned order, has observed that there was only one post of health instructor and it was already duly filled-up. The court noted that there were four persons working as assistant health instructors on an honorarium since 1996, and these included the Petitioner herein. The court noted that nobody was appointed from out of these four persons as health instructor, and accordingly, there was no case of favouritism or unfair labour practice under Item 5 of Schedule IV of the Act. As far as the person, who was appointed in the only available post, is concerned, namely, one Anita Borse, the court noted that there was no evidence brought on record by the complainant that she was appointed by showing any favouritism to her. The court further noted that as indicated in Rule 51(4) of the Mumbai Provincial Corporation Regulations 1949, without sanction of the State Government, the Respondent Corporation could not have

created any new post or appointed the Petitioner to such post. The court noted in this behalf the correspondence exchanged between the Corporation and the State Government and held that there being no vacant sanctioned post, despite communications addressed in that behalf by the Corporation to the State Government, non-appointment of the Petitioner in the post of instructor did not amount to any unfair labour practice.

4. No infirmity can be found with the impugned order. The conclusions are just and proper and exhibit no perversity or impropriety.

5. The petition is, accordingly, dismissed.

(S.C. GUPTE, J.)

Smita
Gonsalves

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