

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

LETTERS PATENT APPEAL NO.115 OF 2011

IN

WRIT PETITION NO. 4068 OF 2009 (D)

APPELLANT : Chief Officer,
Municipal Council,
Mangrulpir, Distt. Washim.

// VERSUS //

RESPONDENTS :

1. Rajaram s/o Tukaram Kajale,
a/a 69 years, Occu-pensioner,
2. Kishor s/o Rajaram Kajale,
a/a 37 yrs, Occu-Panpatti business,

both r/o Ward no.15,
old Ward No.10 - Mangrulpir,
Tq. Mangrulpir, Distt. Washim.
3. Collector, Washim,
Tq. & Distt. Washim.
4. Director, Municipal
Administration, Gruhnirman Bhavan
(MHADA), Ground floor, Rooms
nos. 73 to 76, Kala Nagar, Bandra,
East-Mumbai - 400051.
5. Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

Shri N. R. Saboo, Advocate for appellant.

Shri P. N. Varma, Advocate for respondent Nos.1 and 2.

Ms.S. S. Jachak, AGP for respondent Nos.3 to 5.

**CORAM: A.S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATED : 31/08/2021

ORAL JUDGMENT : (PER : G. A. SANAP, J.)

1. In this Letters Patent Appeal, challenge is to the Judgment and order passed in Writ Petition No.4068 of 2009 dated 10/12/2009, whereby the learned Single Judge dismissed the writ petition with a direction to the petitioner - appellant herein to serve the waiting list of similarly situated candidates to the respondent No.2 and liberty to respondent No.2 to point out the suppression of the facts. The learned Single Judge, thereby upheld the order passed by the Industrial Court, Akola dated 08/07/2009, whereby the Industrial Court had allowed the complaint ULP No.303/2000 filed under Section 28 for committing unfair labour practice as per Items 5 and 9 of Schedule IV of the Act, 1971 and consequently directed the petitioner to recruit the complainant No.2 in its employment on Class-IV category post.

The facts leading to the filing of this Letters Patent Appeal are as follows :-

2. The appellant is the Municipal Council, Mangrulpir, Dist. Washim represented by its Chief Officer. The respondent Nos.1 and 2 filed the complaint before the Industrial Court, Akola

and contended that the respondent No.1 was employed as a Peon with the appellant w.e.f. 18/11/1968 to 31/07/2000. It is stated that as per the Maharashtra Government Resolutions dated 14/04/1981 and 10/12/1981, the respondent No.2 being his son was entitled to get the employment in his place after retirement in Class-IV category. It is stated that the application made for this purpose on 05/07/2000 was rejected without assigning the reason by appellant. It is further stated that the respondent No.2 is a physically handicapped and as such entitled to get the benefit of the above Government Resolution. It is further stated that the similar benefit was extended to the son of employee by name Mr.Ram Bhaskarrao Karkal. According to the respondent Nos.1 and 2, the respondent No.2 as per the Government Resolution was entitled to get the employment in place of his father on his retirement.

3. The Chief Officer of the appellant filed the reply and denied the claim. It is contended that the respondent Nos.1 and 2 have made incorrect statement in the claim. The benefit of the Government Resolution was available to the employee, who had retired before 14/04/1981. The respondent No.2 was also not

otherwise entitled to get the benefit of the said Government Resolution. It is contended that there was no discrimination, as alleged. There is no substance in the complaint.

4. The record reveals that the parties have adduced the evidence before the Member of the Industrial Court. The learned Member of the Industrial Court allowed the complaint as mentioned above. Being dissatisfied with this order dated 08/07/2009 passed by the Member of the Industrial Court, the appellant filed the writ petition. The learned Single Judge dismissed the writ petition with directions as mentioned above.

5. Being aggrieved and dissatisfied with the Judgment and order passed by the learned Single Judge, the appellant has come before this Court in the Letters Patent Appeal. The grounds of the challenge to the impugned order have been set out in the Memo of Appeal. The main ground is that the very foundation of the claim of the respondent Nos.1 and 2 is based on the Government Resolution dated 14/04/1981 and further clarified by the Government Resolution dated 10/12/1981 is not at all sustainable. It is contended that the respondent No.2 was not

entitled to get the employment as per this Government Resolution but the learned Industrial Court as well as learned Single Judge have not considered the said Government Resolution in proper perspective.

6. We have heard the learned advocate for the appellant, learned advocate for the respondent Nos.1 and 2 and the learned Assistant Government Pleader for the respondent Nos.3 to 5. Perused the record and proceedings.

7. Shri N.R. Saboo, learned advocate for the appellant submitted that the very foundation of the claim of the respondent Nos.1 and 2 is shaky. The learned advocate submitted that the benefit of the Government Resolution dated 14/04/1981 as clarified by the Government Resolution dated 10/12/1981 was made available to the son / unmarried daughter of the Class-IV employee retiring before 14/04/1981 and also within one year from 14/04/1981. The learned advocate submitted that the respondent No.1 retired on 31/07/2000 and as such, the benefit of the said Government Resolution was not available to the respondent Nos.1 and 2. Besides, the learned advocate submitted

that the respondent No.2 did not fulfill the remaining conditions of the said Government Resolution. The learned advocate submitted that the order passed by the learned Single Judge is required to be set aside. He further submitted that consequently, the order passed by the learned Member of the Industrial Court is also required to be set aside.

8. Shri P. N. Varma, learned advocate for the respondent Nos.1 and 2 submitted that on proper appreciation of the oral and documentary evidence, the respondent No.2 was found entitled to get the employment on the retirement of the respondent No.1. The learned advocate submitted that the learned Member of the Industrial Court has considered the Government Resolution in question and found that the respondent No.2 was entitled to get the benefit of the same. The learned advocate in substance supported the order passed by the learned Single Judge as well as the order passed by the Member of the Industrial Court.

9. In order to appreciate the rival submissions, we have gone through the record and proceedings. The basis of the claim of respondent Nos.1 and 2 is the Government Resolution

dated 14/04/1981 and the Government Resolution dated 10/12/1981, clarifying the Government Resolution dated 14/04/1981. It is seen on perusal of the Government Resolution dated 10/12/1981 that the Government resolved to relax the condition of recommendation of the name of the son or daughter of the retired employee by the Employment Exchange. Save and except this condition, remaining conditions postulated by the Government Resolution dated 14/04/1981 were not relaxed. Perusal of the Government Resolutions would show that the benefit of the Government Resolution was available to the retired Class-IV employee retired before 14/04/1981 and within one year from 14/04/1981 subject to other conditions. The Condition No.1 provided for the educational qualification. The Condition No.3 provided that the name of son or daughter of the retired employee must be registered with the Local Employment Exchange Office. The prima facie perusal of the Government Resolution would show that the benefit was available to the retired employee within one year from 14/04/1981. As noted above, the respondent No.1 retired on 31/07/2000. It is therefore, ex-facie seen that the respondent Nos.1 and 2 had no right to claim the benefit of this Government Resolution. Minute perusal of the Judgment and

order passed by the Industrial Court would show that the learned Member of the Industrial Court has not considered this important aspect. In our opinion, this was the crux of the matter. The learned Member of the Industrial Court has missed the very crux and basis of the matter.

10. It is further pertinent to note that the respondent No.2 did not produce certificate from the Competent Authority to show that he was physically handicapped. Similarly, no evidence was placed on record before the Industrial Court to show that the name of the respondent No.2 was registered with the Local Employment Exchange Office. It is, therefore, apparent that the benefit of the Government Resolution was extended to the son / unmarried daughter of the retired Class-IV employee within one year from the date of Government Resolution namely; 14/04/1981. Similarly, the benefit of the Government Resolution was available to the Class-IV employee retiring before 14/04/1981. On minute consideration of the record and evidence would show that the respondent Nos.1 and 2 have failed to establish the basic requirements to extend the benefit of the Government Resolution dated 14/04/1981 to the respondent

No.2. In our view, the complaint filed by the respondent Nos.1 and 2 before the learned Industrial Court was without substance. Perusal of the Judgment and order passed by the learned Single Judge would show that the aspect of applicability or non-applicability of the Government Resolution dated 14/04/1981 has not been dealt with. In view of this position, we find that there is substance in the appeal.

11. As a result of the abovesaid observations, we conclude that the order passed by the learned Single Judge dated 10/12/2009 in Writ Petition No.4068/2009 deserves to be set aside. We accordingly set aside the same. As a consequence of setting aside the order passed by the learned Single Judge, the order passed by the learned Member of the Industrial Court dated 08/07/2009 is also required to be set aside. The same is accordingly set aside. The complaint made by the respondent Nos.1 and 2 bearing ULP No.303/2000 stands rejected. No order as to costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)