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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1168 OF 2018

Nandini d/o Bajirao Wakte
Age – 35 years, Occ – Service as
Cook with the National Association for Blinds
R/o Wahadane Vasti, Shrushti Bungalow
Ward No. 7, Shrirampur, Taluka – Shrirampur
District – Ahmednagar

PETITIONER

VERSUS

1. Sushila Ramchandra Bhandari
Age – 35 years, Occ – Service as
Helper with the National Association for Blinds
R/o Tekawadi Building, Ward No.4,
Shivaji Road, Taluka – Sangamner
District – Ahmednagar
2. The Commissioner,
Commissionerate for Welfare of
Physically Handicapped,
Maharashtra State-3
Church Road, Near GPO
Pune-1
3. The District Social Welfare Officer,
Zilla Parishad, Group Ahmednagar
Taluka and District – Ahmednagar
4. The President,
The National Association for Blinds,
Ahmednagar District Branch
Shrirampur, "Siddhivinayak"
Thatthe Ground, Ward No.7,
Shrirampur, Taluka – Shrirampur
District – Ahmednagar

RESPONDENTS

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Mr. Rahul R. Karpe, Advocate for the petitioner
Mr. S. V. Natu, Advocate for respondent No.1
Mrs. V. S. Chaudhari, AGP for respondent No. 2

Mr. S. T. Shelke, Advocate for respondent No.3
Mr. P. V. Barde, Advocate for respondent No.4

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 6th JANUARY, 2022
PRONOUNCED ON : 31st JANUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. This petition is directed against the judgment of the Industrial Court dated 13th December, 2017 in Complaint (ULP) No.71 of 2008, thereby allowing the complaint filed by respondent No.1.

3. For the sake of convenience, the litigating parties are referred in this judgment as – petitioner – as "*petitioner*"; respondent No.1 – as "*complainant*"; respondent No.2 – as "*Commissioner*"; respondent No. 3 – as "*District Social Welfare Officer*" and respondent No.4 – as "*the School*".

Facts, in nutshell, are as follows:

4. The complainant filed Complaint (ULP) No. 71 of 2008 before the Industrial Court claiming designation and pay scale of the post of Cook and arrears of difference of pay, with effect

from October, 2002, along with interest.

5. In the complaint, in short, it is contended that the school is recognized by the Commissioner. Various posts, including the post of "Cook" and "Helper" are duly sanctioned by the Commissioner and the District Social Welfare Officer. The complainant is 7th Standard pass and belongs to Special Backward Class Category. Since she was in need of job, she joined the school in August, 1997 as a Cook. At that time the school was not receiving grant in aid. The petitioner is studied up to 4th Standard. She joined the school in the year 2004 and was given work of Helper. The School started receiving grant in aid by order dated 14th October, 2004. The school submitted a proposal seeking sanction/approval to the appointments of the employees. Though the appointments were sanctioned by the District Social Welfare Officer in November, 2004, however, the complainant was shown as "Helper" and the petitioner was shown as a "Cook". After the same, the complainant was designated as Helper and was given the pay scale of 2500-3200 and the petitioner was given approval on the post of Cook and was given the pay scale of 2610-4000, though she is junior, inexperienced and less educated than the complainant. The school realized the mistake in the designations of the

complainant and the petitioner and hence forwarded a proposal on 14th July, 2005 seeking change in designations of the complainant and the petitioner. In spite of the persuasion by the school, designation of Cook was not given to the complainant.

6. The Commissioner and the District Social Welfare Officer denied allegations and resisted the Complaint, by filing detailed say and contended that the complainant was appointed by the School as Helper with effect from 1st December, 2000 on permanent basis. The petitioner was proposed to be appointed as Cook and hence her appointment was approved as Cook. Though the proposal for change in designation was received, the explanation sought from the school and the consent of the petitioner were not received.

7. The school denied the allegations of the unfair labour practice. It is contended that the complainant has been working as a Cook since the year 2000. After the Government sanctioned posts in August, 2004, the school submitted proposal to the District Social Welfare Officer, however, sanction was granted as per the whims of the officer. The designations of employees were changed by the District Social Welfare Officer. Post of Cook was erroneously given by him to the petitioner and post of Helper was wrongly given to the complainant. The petitioner had never

worked as a Cook. The proposal submitted by the School, for change of designations of the complainant as a Cook and the petitioner as a Helper, was not decided by the District Social Welfare Officer. The orders of appointment given to the complainant and the petitioner were ignored while granting approval.

8. The petitioner opposed the complaint contending that she is 4th Standard pass, which is the requisite qualification for appointment on the post of the Cook. Accordingly, she was appointed as a Cook on 21st July, 2004 and she is working as such and she has acquired permanent status as Cook. The school, in collusion with the Complainant, has decided to harass the petitioner and hence the school forwarded the proposal for changing designation, by manipulating the documents.

9. The Industrial Court, after hearing the parties, allowed the Complaint filed by the Complainant. This order is impugned in the present writ petition.

10. Heard Mr. Karpe, learned advocate for the petitioner, Mr. Natu, learned advocate for respondent No.1 - Complainant, learned AGP for respondent No.2 - Commissioner, Mr. Shelke, learned advocate for respondent No. 3 - District Social Welfare

Officer and Mr. Barde, learned advocate for respondent No.4 – School.

11. Learned advocate for the petitioner submits that the petitioner was uninterruptedly working as a Cook since seventeen years, therefore, the petitioner has acquired permanency. The complainant was not qualified to be appointed on the post of Cook. The claim of the complainant was based on fraud and manipulated documents. From the record it is clear that the documents are fabricated by the complainant in collusion with the school. There is no post of Care Taker available in the School. There is total non application of mind on the part of the Industrial Court in allowing the Complaint. There is erroneous appreciation of the evidence on record by the Industrial Court and the impugned judgment is, therefore, unsustainable and is liable to be quashed and set aside.

12. Per contra, learned advocate for the Complainant supported the impugned judgment. He submits that the Industrial Court has properly appreciated the evidence on record and has given sound reasons while allowing the complaint filed by the Complainant. He submits that the admissions given by the petitioner in her cross-examination, falsify her claim that she was working as a Cook. He, therefore, submits that there is no

substance in the petition and the petition is liable to be dismissed.

13. Learned advocate for the District Social Welfare Officer, submits that the approval was rightly granted to the posts of the Petitioner and the Complainant, as per the proposal submitted by the School. The same was as per the staffing pattern. The Industrial Court could not have allowed the complaint. The directions given by the Industrial Court are beyond the scope of the jurisdiction of the Industrial Court. According to him, the appointment orders given to the Complainant and the Petitioner ought to have been cancelled and fresh appointment orders should have been issued. He, therefore, prayed to quash and set aside the impugned judgment of the Industrial Court.

14. Learned advocate for the School supported the complainant by contending that the petitioner was appointed as Helper on 27th January, 2004 and the Complainant was appointed as a Cook. Since she was initially appointed.

15. It is a matter of record that earlier Complaint (ULP) No. 71 of 2008 was dismissed by the Industrial Court. The said decision was subject matter of challenge before this Court in three writ petitions bearing No.7691 of 2013, 6190 of 2013 and 7005 of

2013, filed by the District Social Welfare Officer, the Complainant and the Petitioner, respectively. The decision of the Industrial Court was set aside by this Court and by granting liberty to the parties to place additional documentary and oral evidence on record and the Industrial Court was directed to give a clear finding on the status of the complainant and the petitioner. After remand, the judgment impugned in the present writ petition is passed by the Industrial Court.

16. Admittedly, the complainant is senior to the petitioner. The Complainant was working as a Cook from 1st December, 2000 and the petitioner was working as a Helper from 27th January, 2004.

17. The record reveals that the petitioner has given following admissions in her cross examination:

"Muster Roll shows her designation as Helper (मोलकरीण) and the complainant as Cook (स्वयंपाकी). In the service book her designation is shown as मदतनीस (Helper) and the designation of the complainant is shown as स्वयंपाकी (Cook)"

18. Muster rolls produced before the Industrial Court for the period between May 2001 and August, 2004, clearly indicate that

the Complainant's designation was shown as स्वयंपाकी (cook) and wherever name of the petitioner appears, her designation was shown as मदतनीस (Cook). The appointment letters issued by the School also clearly indicate that the complainant was appointed as a Cook, retrospectively since the year 2000. Thus, from the evidence led before the Industrial Court, it is proved that the complainant had worked as a स्वयंपाकी (Cook), at least since 2000 till the District Social Welfare Officer granted approval and designated her as मदतनीस (Helper) in the year 2004. It is an admitted position on record that the petitioner joined the School in the year 2004. The petitioner has claimed that she was appointed in the School as a Cook on 27th January, 2004 on that day, admittedly none of the posts in the school were sanctioned / approved by the District Social Welfare Officer. The petitioner could not substantiate her contention, by leading evidence to show that she was appointed as Cook on 27th January, 2004. It is, therefore, clear that the petitioner started working as Cook only after the District Social Welfare Officer approved her appointment as Cook by order dated 22nd November, 2004. It is clear from the record that the complainant was actually working as a Cook till the designation was changed by the order dated 22nd November, 2004 by the District Social Welfare Officer.

19. It is contended by the Commissioner and the District Social Welfare Officer before the Industrial Court that approval to the posts of the petitioner and the complainant was granted as per the proposal submitted by the School. However, in spite of the direction by the Industrial Court, they failed to produce the relevant record before the Industrial Court. The relevant proposal seeking approval to the appointments of the complainant and the petitioner are not produced by the Commissioner and the District Social Welfare Officer. These documents are produced by the School, which reveal that the School had proposed to grant approval to the services of the complainant as a Cook (स्वयंपाकी) and to the petitioner as a Care Taker (काळजी वाहक). It is not clear as to why the District Social Welfare Officer has changed the designation of the complainant and the petitioner.

20. Though it is contended by the Commissioner and the District Social Welfare Officer that the complainant was appointed as मदतनीस (Helper), the same is not acceptable in absence of any material placed on record by them. It is further clear from the record that after the School realized the mistake in the designation of six employees, including the petitioner and

the complainant, revised proposal was submitted by the School on 14th July, 2005, requesting to re-designate the six employees, including the Head Mistress. A specific request was made to re-designate the Complainant as Cook and the petitioner as Helper. Admittedly, no decision was taken by the District Social Welfare Officer on the said proposal till the Industrial Court decided the Complaint.

21. It is, therefore, clear from the above discussion that the petitioner is trying to take advantage of the wrong approval granted to her as a Cook and to the complainant as a Helper. In that view of the matter, there is no substance in the contention of the petitioner that she was appointed as a Cook and the approval was rightly granted to her appointment on the post of Cook.

22. The Industrial Court, after assessing the evidence and after considering the record, has rightly concluded that the complainant was working as a Cook, at least since 2000 and the School had sought approval to her appointment as a Cook and the petitioner was actually working as a Helper in the beginning of the year 2004. The petitioner became cook only after the District Social Welfare Officer designated her as such. The School wanted the complainant to be appointed as Cook. There was no

reason for the District Social Welfare Officer for not granting approval to the appointment of the complainant as a Cook. The complainant possesses requisite qualification for appointment on the post of Cook. The petitioner failed to prove that she has studied up to 7th standard. Though she led evidence to prove the same, the said evidence is disbelieved by the Industrial Court by giving cogent reasons. The Industrial Court, therefore, has held that the District Social Welfare Officer has made unwarranted changes in the proposal submitted by the School, due to which designations of the Complainant and the Petitioner were changed. Due to the mistake committed by the District Social Welfare Officer in granting wrong approval to the designations of the petitioner and the complainant, the complainant was made to accept the post on lower pay scale, which amounted to unwarranted change in her service condition to remain as a Cook. Said change was adverse and it was an illegal change in service conditions made unilaterally without hearing the complainant and it was without her consent. The same amounted to unfair labour practice. The Industrial Court has correctly appreciated the evidence on record and has rightly allowed the complaint filed by the complainant.

23. There is no illegality or perversity in the order impugned in

the present writ petition. No case is made out by the petitioner to exercise extra ordinary writ jurisdiction to cause interference in the impugned order. The writ petition, since is devoid of any substance, is dismissed with no order as to costs. Rule stands discharged.

24. At this stage, the learned advocate for the petitioner submits that interim order is operating in favour of the petitioner since 2016, the same may be continued for a further period of four weeks. Interim relief shall continue for further period of four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE