

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 CIVIL APPLICATION NO.6772 OF 2015
IN
REVIEW APPLICATION (ST) NO. 16030 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
BHARATI VITTHALRAO RAUT

...

AGP for Applicants : Mrs. V. S. Chaudhari
Adv. for Respondent: Mr. R. K. Ashtekar

CORAM : RAVINDRA V. GHUGE, J.
DATE : 11th March, 2022

ORDER:

1. Delay of 292 days has been caused in filing the review application for seeking review of the order passed by this Court dated 22nd July, 2014. Since the delay was of only 292 days, I called upon the learned Advocates for the respective parties to address the Court on the review application.
2. For the reasons assigned in the application, the same is allowed. The delay is condoned. The review application is taken up for hearing.
3. I have considered the strenuous submissions of the learned Advocates for the respective sides and perused the review application in the light of the judgment of the Industrial Court, Latur dated 21.11.2021.

4. There is no dispute that the Government Resolution dated 05.02.2007 has been introduced by the Government and it is an admitted position that the said G.R. is applicable to the original respondents and the employees like the complainant. The complainant was working as a Karmashala Parichar in Class IV category and she has been appointed by following the due procedure with effect from 23.06.1999. As the local authority at Aurangabad did not grant regularization to the complainant, she approached the Industrial Court in Complaint (ULP) No.12/2021. By its judgment dated 21.11.2011, the Industrial Court allowed the complaint and issued the following directions:-

- "1. The complaint is hereby allowed with no order as to costs.
2. It is hereby declared that the respondents have committed unfair labour practice under Item 9 of Sch.IV of the MRTU & PULP Act, 1971, and it is directed to cease and desist from engaging the same forthwith.
3. The respondent Nos. 1 and 2 are directed to absorb the complainant on the said post of Karmashala Parichar or any other post of Class-IV Category, and shall give the benefits of Government Resolution No. आयटीआय-1006 (126/06)व्यशि-2 dated 05.02.2007 within a period of three months from the date of this order."

5. This Court has already taken a view in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao,

(2015) 5 Mh.L.J. 75 and the learned Division Bench of this Court at Nagpur has taken a view in a Reference Writ Petition in the matter of The Municipal Council & Another vs Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J.867. The consistent view of this Court is that in the matters of permanency sought by employees working in the State entities or the State instrumentalities, completion of 240 days in continuous employment is not the criteria for granting regularization. Standing Order 4-C under the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, will not be applicable in such matters, wherein the State or the State instrumentalities are involved. The posts have to be created after due sanction of the several authorities of the State Government and since the recruitment on such posts is a part of public employment, the public at large has to compete for selection and appointment. However, those employees, who have been working for more than one decade and whose appointments are not illegal but merely irregular, can be considered for regularization in the light of the judgment delivered by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi 2006 (4) SCC 1.

6. The Government Resolution dated 05.02.2007 assists the original complainant. However, the Industrial Court cannot direct the local authorities i.e. the Deputy Director, Vocational Education and Training,

Aurangabad to grant regularization or absorption of the complainant. The Industrial Court should have directed respondent No.1 to prepare a proposal of all Karmashala Parichars inclusive of the complainant and forward such proposal to respondent no.2 to be considered for absorption and regularization in the light of the G.R. dated 05.02.2007. The correct position of law was not brought to the notice of this Court. It is expected of the learned Advocates who handled the case before the Court to study the matter properly and render assistance to the Court. Such assistance was not extended to the Industrial Court at Latur and also to this Court. Therefore, the Industrial Court at Latur committed an error in arriving at its conclusion of allowing the complaint and erroneously issuing the impugned directions.

7. In view of above, the review application is allowed and by the consent of the parties, the judgment of this Court dated 22.07.2014 is reviewed only to the extent of the following directions:

- (a) The order dated 22.07.2014 is recalled.
- (b) The writ petition is partly allowed.
- (c) The directions set out in paragraph No.2 and 3 by the Industrial Court reproduced above are quashed and set aside and the following directions are issued:

- (i) Respondent No.1, the Deputy Director, Vocational Education and Training, Regional Office, Aurangabad shall prepare the proposal of all the Karmashala Parichars including the complainant, in the light of the G.R. dated 05.02.2007 and forward the same to respondent No.2 on or before 31.05.2022.
- (ii) Respondent No. 2, the Director (Training), Directorate of Vocational Education & Training, Mumbai, after receiving the above proposal from respondent No.1, shall consider the proposal of the Karmashala Parichars strictly in accordance with their seniority and in the light of the G.R. dated 05.02.2007 and depending upon the vacant posts available, grant absorption/regularization to such Karmashala Parichars within a period of four months and not later than 30th September, 2022.
- (iii) If the proposals of the Karmashala Parichars as per their seniority are more than the available posts, those Karmashala Parichars, who are juniors, will have to wait for further vacancies or creation of posts, would be considered in a staggered manner as and when such posts are available.
- (iv) These Karmashala Parichars shall not be terminated only on the ground that they are temporaries or that their proposals are pending. Such protection shall not apply to disciplinary cases.

- (v) The above directions are issued keeping in view that the complainant may not be the only Karmashala Parichar and other Karmashala Parichars who may be senior to her, cannot be excluded. With the above directions, further litigation/multiplicity of litigation would be avoided.

(RAVINDRA V. GHUGE, J.)

JPC