

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7985 OF 2011

Pandit Sandu Jadhav,
Aged-47 years, Occu-Service,
G-20/7, N-6, Cidco,
Aurangabad - 431003

-- PETITIONER

VERSUS

1. The Chief Executive Officer,
Zilla Parishad, Aurangabad,
2. The Executive Engineer,
Zilla Parishad Water Supply Division
Zilla Parishad, Aurangabad
3. The Deputy Engineer,
Zilla Parishad Water Supply Sub
Division, Gangapur,
Dist.Aurangabad

-- RESPONDENTS

Mr.Vivek Dhage, Advocate for the petitioner.
Mr.U.B.Bondar, Advocate for respondent Nos. 1 to 3.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 14, 2022

ORAL JUDGMENT :

1. Heard the learned counsel for the petitioner. The petitioner is aggrieved by the impugned judgment and order dated 23/09/2011 passed by the Industrial Court at Aurangabad in Complaint (ULP)

No.69/2009, thereby dismissing his complaint. The petition, on being instituted in the year 2011, on the first date of it's hearing and to be precise on 12/10/2011, the following order came to be passed :-

- "1. Mr.Bondar, learned counsel appears for all the Respondents and seeks time.*
- 2. Mr.Anand Chawre, learned counsel submits that after the judgment is delivered by the Industrial Court, the Industrial Court has continued the interim order passed earlier for three (3) weeks and the same is in force till 14.10.2011.*
- 3. The interim order passed by the Industrial Court and operating till 14.10.2011 to continue till 09.11.2011."*

While the petition came to be admitted on 14/02/2012, the interim order came to be continued and is in force till date.

During the pendency of the writ petition, the petitioner has attained the age of superannuation and retired from service w.e.f. 30/04/2020. In the wake of the stay being operating in his favour and continued from time to time, at the time of his retirement, he continued to hold the post of 'Civil Engineering Assistant'. The learned counsel for the petitioner state that on account of pendency of the present writ petition, he has been granted provisional pension and he is deprived of the benefits of Regular Pension and post retiral benefits.

2. In order to appreciate the grievance of the petitioner, a brief background is necessary. The petitioner, Shri. Pandit Sandu Jadhav, was appointed as 'Muster Assistant' for the period of 3 months by an appointment order issued on 29/04/1987 by the Executive Engineer (Irrigation), Zilla Parishad, Aurangabad on payment of Rs.400/- per month. The appointment order states that the appointment was purely seasonal and shall be continued only till the work is available and will come to an end, either on expiry of the term of appointment or on the work under the project coming to an end, whichever occur earlier. The appointment of the petitioner continued on the said basis from year to year is not in dispute.

During the interregnum, the petitioner completed a certificate course of "Construction Supervisor" of one year duration and the Maharashtra State Board of Vocational Examinations, issued him a certificate certifying that he had passed the certificate examination held in April 2004 in First Class. It is pertinent to note that he cleared the said examination from the Government Technical High School Center Cum Industrial School.

3. Upon acquiring the said qualification, the petitioner sought benefit of the Government Resolution issued by the Rural Development and Water Conservation Department on 26/11/1997. The Government Resolution placed on record at page No.40 of the paper book under the signature of the Under Secretary of the State of Maharashtra in the said Department, declared that by exercising the powers available under the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 and in particular by invoking Rule 2(5) and Rule 2(7), the Government had declared that one year course in 'Construction Supervisor' shall be granted equivalence for the recruitment of the Jr.Engineering Assistant in Zilla Parishad either by nomination or by transfer. The said order came to be issued with the concurrence of the Higher Education Department of the State. The petitioner also place reliance upon another Government Resolution dated 20/05/1999 issued by the same department, which formulated the Rules regarding the creation of new cadre of 'Civil Engineering Assistant' by unification of various technical posts.

Careful reading of the said Government Resolution would reveal that in the Department, various persons were working in various technical and supervisory posts as set out in Schedule A appended to

the said resolution and this included the post of Mistry Grade I, Mistry Grade II, Road Karkun, Muster Clerk, Samaipal (Time Keeper). The Government decided to unify the said positions and create one uniform cadre of 'Civil Engineering Assistant', in the pay scale of 1200-30-1440 from the date of issuance of the resolution and it resolved that the persons working on the technical post would be absorbed on the various posts created in the cadre of 'Civil Engineering Assistant' in phase manner, spread over from May 2000 to May 2003, subject to they satisfying the criteria of requisite qualification. The respective Zilla Parishad's were issued directions to the effect that they should absorb the technical persons working on their pay roll into the newly created cadre of 'Civil Engineering Assistant' by taking into consideration their seniority and qualifications.

4. On 20/10/1994, another Resolution was issued by the Irrigation Department, with reference to the creation of the cadre of 'Civil Engineering Assistant' w.e.f. 01/01/1989 in the Irrigation Department and in the Public Works Department as per the recommendations of Chitale Committee and certain clarifications came to be issued in the wake of the difficulties expressed in it's implementation. The

Government, therefore, resolved vide the said resolution, that for appointing the persons on the newly created cadre of 'Civil Engineering Assistant' from 01/01/1989 and those persons who are in Government Service as on 01/01/1989 and those have passed the one year diploma of 'Civil Engineering Assistant', irrespective of the post on which they are working or the nature of their establishment, by way of a special case they shall be absorbed in the cadre of 'Civil Engineering Assistant'. Even the post of Karkun was also included in the list of posts which were prescribed by the earlier Government Resolutions, would be eligible for absorption as a 'Civil Engineering Assistant'.

5. In the backdrop of the policy of the State Government as reflected in the Government Resolutions issued by the Rural Development Department as well as the Irrigation Department, the proposal of the petitioner for his absorption in the cadre of 'Civil Engineering Assistant' in the wake of the qualification possessed by him, being one year diploma of Construction Supervisor, was processed. The entire process undertaken in finalizing the decision is placed on record in the form of Exhibit D to the petition and it came to be initiated on 24/10/2010. The nomenclature of the post of the

petitioner, which he was holding was referred to as 'Pump Operator'. On perusal of the detailed noting, it was specifically clarified that though the post of Pump Operator do not find its mention in the Government Resolution, still it being a technical post, it deserves a consideration and in the wake of the qualification possessed by the petitioner, he was eligible to be absorbed on the post of 'Civil Engineering Assistant', in the newly created cadre. After obtaining the final approval from the CEO of the Zilla Parishad, the petitioner came to be appointed on the post of 'Civil Engineering Assistant' by issuing an appointment order on 13/02/2009 under the signature of the C.E.O., Zilla Parishad, Aurangabad. His absorption was made in the said cadre in a pay scale of Rs.4,000-100-6,000 being made applicable and he came to be posted in the Water Supply Scheme Division, Sub Division, Gangapur.

In furtherance of the said order of appointment, the petitioner was absorbed as a 'Civil Engineering Assistant' and continued to discharge his duties on the said post.

6. Barely, four months on the said post, On 22/06/2009, an order was issued by the Chief Executive Officer, Aurangabad, recalling his

absorption on the post of 'Civil Engineering Assistant' by projecting a justification, that the post which was holding, being of Pump Operator, was not covered by the decision of the State Government as expressed through its Resolutions and since an objection was raised about his appointment / absorption, the same was recalled and he was reverted back to his old post, of Pump Sanchalak/operator.

7. Being aggrieved by the said order, the petitioner preferred a Complaint (ULP) No.69/2009, before the Industrial Court, Aurangabad by invoking Section 28(1) r/w Schedule 4 Item 3, 5 and 9 of the MRTU and PULP Act, 1971, in which he alleged unfair labour practice, since the benefit accrued to him was withdrawn by way of victimization. On the complaint being filed, it was contested by the respondent/Zilla Parishad by filing a written statement and the only defence taken is that in terms of the Government Resolution dated 20/05/1999, under which the post of 'Civil Engineering Assistant' was created in the form of a cadre, did not cover the post of Pump Operator, though his qualification of possessing a diploma of Construction Supervisor, was not disputed.

8. Since the petitioner could not secure the interim relief, he approached this Court by filing WP No.86/2011 and this Court by order dated 10/01/2001, recorded prima facie case in his favour in the following words :-

"4. Prima facie consideration shows that the resolution dated 5th August, 2003 is about the inclusion of tracers in the cadre of Civil Engineering Assistant. Basic resolution dated 28th October, 1994 shows a direction to over look the post held by incumbent who possesses requisite qualification."

This Court further issued the following direction -

"5. Today the petitioner is continuing on post of Civil Engineering Assistant. In this situation the interest of justice would be met by directing the parties to maintain status-quo as on today and by expediting the hearing before the Industrial Court."

6. Accordingly, the proceedings before the Industrial Court are expedited and learned Member of Industrial Court is directed to decide the said Complaint as early as possible in any case within a period of one year from the date of communication of this order to it. The parties to maintain status-quo as on today till then."

In pursuance of the order dated 10/01/2011, the petitioner continued to hold the post of 'Civil Engineering Assistant', till hearing

of his complaint before the Industrial Court.

9. The proceedings in Complaint (ULP) No.69/2009 culminated, with a judgment being delivered by the Industrial Court on 22/09/2011, dismissing the complaint of the petitioner by recording a finding that the complainant was unable to prove unfair labour practice on the part of the respondent and by further recording that in the light of the admissions of the complainant during his cross examination and by reading the Government Resolution dated 20/05/1999 and 05/08/2003, it is clear that the complainant, in his capacity as a 'Pump Operator', was not entitled/eligible to be absorbed in the post of 'Civil Engineering Assistant'. It is further recorded by the Industrial Court that in the subsequent Government Resolutions dated 20/08/2010, a reference is made only as regards unification of 7 post intended to be merged into the unified cadre i.e. the 'Civil Engineering Assistant' and the Zilla Parishad has committed a serious lapse by wrongly absorbing the persons holding the post other than 7 included posts, which resulted in the complaint being made to the Divisional Commissioner and directions being issued to rectify the error. Upon the admission given by the petitioner that no other person holding the post of Pump

Operator is appointed as 'Civil Engineering Assistant', his complaint was dismissed.

10. The present writ petition assails this judgment of the Industrial Court delivered on 22/09/2011, dismissing his complaint and while issuing notice, an interim order came to be passed to which I made a reference in the primordial paragraph of the judgment.

11. On hearing the learned counsel for the petitioner, who has invited my attention to the additional affidavit filed by him on 06/09/2021, wherein certain subsequent developments are brought on record, reference is made to an affidavit filed by the Deputy Commissioner (Establishment) working in the office of Divisional Commissioner, Aurangabad Division in writ petition filed by one Jayant Vishwanath Naik before this Court (WP No.1478/2017). Worth to note that this Mr.Naik was also working as a Pump Operator in Zilla Parishad, Aurangabad and was aggrieved by his non absorption in the cadre of 'Civil Engineering Assistant'. He approached this Court and while opposing the said writ petition, an affidavit came to be filed by the Deputy Commissioner, where he has specifically worded as under :-

"6. I say and submit that, there is amendment carried out in the recruitment rule of Civil Engineer Assistant vide Rural Development and Water Conservation Department Notification dated 30/08/2014, in which it is mentioned that, "person who are in the service of Zilla Parishad in the state as on the 2nd February 2006 who have passed the Civil Engineering Assistants one year course examination or acquired any equivalent qualification at the time of issuance of the notification conducted by the government technical Institute of the Technical Education Department of the Government, shall be absorbed as Civil Engineer Assistant, if they are willing to work as Civil Engineer Assistant irrespective of their cadre and post in the Zilla Parishad. The xerox copy of Government Notification dated 02/02/2006 and 30/08/2014 is annexed herewith and marked as Exh.R-2 and R-3 collectively."

12. Apart from this, the Government Resolution dated 30/08/2014 effecting an amendment in the Maharashtra Zilla Parishad District Services Recruitment (Amendment) Rules, 2015 is also placed on record.

13. From the two relevant facts being brought on record by the additional affidavits, it can be discerned that now the Recruitment Rules itself have been amended by removing the criteria of a person

belonging to only the restricted cadres/post as was earlier notified by the State Government and now while prescribing the rules for the 'Civil Engineering Assistant', any person who is in the service of Zilla Parishad in the State as on 02/02/2006 and who has passed Civil Engineering Assistant's one year Course examination or acquired any equivalent qualification at the time of issuance of notification, is held eligible to be absorbed as a 'Civil Engineering Assistant' irrespective of his cadre and post in the Zilla Parishad. This is an important development, which must be given due weightage while determining the correctness of the impugned judgment passed by the Industrial Court, dismissing the complaint of the petitioner.

14. My attention is also invited to a decision of the Division Bench of this Court in case of one **Gorakhnath Panjaba Ingale (in WP No.8352/2015, decided on 20/02/2017)**. The judgment/order placed on record on page No.122, of the additional affidavit, reveal that the petitioner Gorakhnath Ingale was absorbed as a 'Civil Engineering Assistant' in the year 2005, but specifically came to be reverted as Mistry Grade-I and he approached the Industrial Court, which granted stay and during the operation of the order of stay, he stood retired on

attaining the age of superannuation. In the facts of the case, by specifically referring to the Government Resolution dated 28/10/1994, and on consideration of the stand of respondent Zilla Parishad that the petitioner could not have been considered for the post of 'Civil Engineering Assistant', on the ground that he was never given appointment as Mistry Grade I, but was merely paid the salary of the said post, the Division Bench allowed the writ petition with the following observations :-

"8. Considering all aforesaid conspectus of the matter, the impugned order dated 18/07/2011 reverting the petitioner and the subsequent order dated 07/05/2016 passed by respondent No.3 are quashed and set aside.

It is not disputed that till the retirement, the petitioner was paid salary of 'Civil Engineering Assistant'.

Respondents shall pay the pension and pensionary benefits to the petitioner as attached to the post of Civil Engineering Assistant.

9. Writ petition accordingly allowed in above terms. No costs."

15. The said decision has been followed by the learned Single Judge of this Court (Coram : Ravindra V.Ghuge, J.) in his order dated 11/01/2019 in case of one Pralhad Rambhau Dhage and others Vs. Chief Executive Officer.

16. Another important aspect brought on record by the additional affidavit is a resolution issued by the Finance Department of the Government of Maharashtra on 07/10/2016, where the services rendered in the amalgamative cadres are also directed to be taken into account for granting assured progressive schemes.

17. These subsequent developments cannot be lost sight of in the wake of another important fact being that the petitioner continued to render his services to the Zilla Parishad as 'Civil Engineering Assistant' till 30/04/2020 and has enjoyed benefits flowing from the said post till his superannuation except for technical reasons he has not been conferred with the full and final pension which he is entitled to draw on the said post, on the pretext of the pendency of the present writ petition.

18. The impugned judgment dated 22/09/2011 clearly reveals that the complainant had filed his affidavit in lieu of evidence and was cross examined by the respondents, although the respondent/ Zilla Parishad has not adduced any oral evidence.

While determining the issue as to whether the complainant has

proved that the respondents have engaged in unfair labour practice under Item 5 and 9 of the MRTU and PULP Act, the learned Judge has recorded that the complainant was serving as a daily wager from 01/04/1987 and thereafter he was appointed as a Muster Assistant and on completion of 5 years continuous service, he was taken on C.R.T.E. as per the government policy. It is also recorded as an admitted fact that he was appointed as a 'Pump Operator' from 07/12/1998. The unification of various cadres and formation of new cadre of 'Civil Engineering Assistant' as a policy of the State Government as contained in its resolution, is also not disputed. While negating the points framed for determination and answering against the complainant, the reasoning cited is, on perusal of the Government Resolution dated 25/05/1999, the complainant admitted that there is no reference in the said resolution to the post of 'Pump Operator'. In the wake of his admission that he was appointed as a 'Pump Operator' w.e.f. 07/12/1998, since he is not covered under the Government Resolution dated 20/05/1999, the Divisional Commissioner has rightly directed his restoration to his original post of Pump Operator from the cadre of 'Civil Engineering Assistant'. The findings rendered in paragraph No.17 of the impugned judgment, read thus :-

"17. On perusal of the Govt. Resolution dated 20/05/1999, it is clear that the State Government intended unification of the posts of Mistry Grade-I, Mistry Grade-II, Road Karkun, Muster Clerk and Time keeper by creating cadre of 'Civil Engineering Assistant'. In these five cadres, admittedly, there is no reference of the cadre of Pump Operator on which the complainant was serving since 1998. By Govt.Resolution dated 05.08.2003, another cadre of Draftsman was included in the schedule at Sr.No.6. Thus it is clear that the Govt. intended unification of six cadres referred above by forming cadre of Civil Engineering Assistant. In such six cadre of Pump Operator is not included."

19. The perusal of the Government Resolution dated 20/05/1999, reveal that it refer to certain posts in the Appendix A, however, on meaningful reading of the said government resolution, it will only reveal that the purpose of issuance of the Government Resolution would be discerned from the preface appended thereto, which narrate that the Government was desirous of availing technical services of the persons working on distinct technical and supervisory posts, though under different nomenclature and therefore a study group was constituted by the State Government to evolve a manner in which the services of the various technical persons working can be utilized and accordingly the study group submitted its' recommendation to the Rural

Development Department and indicated that various posts like the Mistry Grade I, Mistry Grade II, Road Karkun, Muster Clerk, Time Keeper and other various posts which are manned by technical persons can be consolidated together in the cadre of 'Civil Engineering Assistant'. The preface of the resolution would indicate that the Government did not intend to restrict the scope of the same only to the 5 posts but intended that all those persons possessing technical knowledge and discharging various duties under whatever nomenclature available and known by, would be absorbed in the post of 'Civil Engineering Assistant'. That is the precise reason that the recruitment rules are now amended by the Act of 2014, and which has been placed on record and it can be reflected in the notification issued by the Rural Development and Water Conservation Department dated 14/08/2014 thereby amending the provisions contained in the Maharashtra District Services (Recruitment) Rules. The Rules now provide that any person holding any post, irrespective of his cadre, but has passed one year diploma in Civil Engineering Assistant or even any equivalent qualification, is held to be eligible to be appointed as 'Civil Engineering Assistant'. In the wake of the aforesaid, even if the petitioner was extended the benefit of the amendment brought in force

from 2014 since he was in service on 2006, he would have qualified himself to be absorbed on the post of 'Civil Engineering Assistant', on bringing the amendment in the said rules.

20. The impugned judgment, however, failed to take into consideration the said aspect of the Government Resolution dated 20/05/1999 and the learned Judge of the Industrial Court has fallen into serious error in restraining the scope of the Government Resolution only to the cadres mentioned in Appendix - A accompanying the government resolution without referring to the intention of the Government in introducing the policy of unifying various technical cadres and being brought under the umbrella of one cadre of 'Civil Engineering Assistant'.

The impugned judgment passed by the Industrial Court, which take a conservative view of the Government Resolution dated 20/05/1999 issued by the Rural Development Department, therefore cannot be sustained. Another foremost reason why the petitioner cannot be now ousted from the said cadre is that from the date of grant of interim relief in his favour, by an order passed by this Court in the year 2011, on being directed to be reverted by the impugned order on

the post of Pump Operator, he continued to work as 'Civil Engineering Assistant' under the interim orders and till the date of his retirement, he continued to discharge his duties as 'Civil Engineering Assistant' to the Zilla Parishad.

In the light of the said glaring fact, since after his appointment to the post of 'Civil Engineering Assistant', by an order dated 13/02/2009, the petitioner has continuously rendered his services to the Zilla Parishad as 'Civil Engineering Assistant' and accordingly being paid in the pay scale applicable to the said post. There is no reason why he shall not derive his pensionary benefits declaring that he has retired from the Zilla Parishad on 30/04/2020 from the post of 'Civil Engineering Assistant'.

21. In the wake of the aforesaid discussion, the writ petition is allowed by quashing and setting aside the impugned judgment dated 23/09/2011 passed by the Industrial Court at Aurangabad in Complaint (ULP) No.69/2009.

As a necessary consequence on account of his retirement from the post of 'Civil Engineering Assistant' w.e.f. 30/04/2020, the respondent Zilla Parishad is directed to finalize and release his pension and other

post retiral benefits accruing to him, within a period of (8) weeks from today. Failure to release the same, within the aforesaid period, will carry interest @ 8% on the amount, till it's realization.

22. Rule made absolute in the above terms.

(BHARATI H. DANGRE, J.)