

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10298 OF 2014

The Chief Officer,
Municipal Council, Jalna,
Tq. & Dist. Jalna.

.. Petitioner

Versus

Shaikh Moinoddin s/o. Shaikh Yusufoddin
Age : Major, Occu : Service,
R/o. Old Jalna, Mastgad, Jalna,
Tq. & Dist. Jalna.

.. Respondent

...
Mr. Ashok R. Tapse h/f. Mr. Vaibhav Deshmukh,
Advocate for petitioner
Mr. Tabrezuddin R. Quadri i/by. Mr. M.N. Sayyed,
Advocate for respondent

...
WITH
CIVIL APPLICATION NO.8611 OF 2021
IN
WRIT PETITION NO.10298 OF 2014
...

CORAM : SANDEEP V. MARNE, J.

DATE : 21-12-2022

ORAL JUDGMENT :

. Rule. Rule is made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage. Mr. Tabrezuddin R. Quadri, learned Advocate for respondent waives notice on behalf of respondent.

2. By this petition, petitioner - Municipal Council has challenged the judgment and order dated 04.08.2014 passed by

Member, Industrial Court, Jalna, thereby partly allowing respondents Complaint (ULP) No.57 of 2007 and directing petitioner to fix the respondent in the pay scale of post of Pump Operator and to pay him wages and arrears.

3. The admitted facts are that respondent was recruited in the services of the Municipal Council, Jalna on the post of Sweeper on 19.12.1988. One Shri. L.P. Kulkarni was working on the post of Pump Operator on regular basis, who retired on attaining the age of superannuation sometime in March-2003. Therefore, by order dated 25.03.2003 the Chief Executive Officer of the Municipal Council directed respondent to work as Pump Operator in place of Shri. L.P. Kulkarni till further orders.

4. It appears that the staffing pattern for the Municipal Council was sanctioned by the State Government on 09.05.2005, under which the State Government sanctioned only three regular posts of Pump Operator and 7 posts were sanctioned on temporary basis. It appears that petitioner made a request for his regular promotion to the post of Pump Operator and by communication dated 25/29.08.2005, the Municipal Council turned down his request on the ground that as per the staffing pattern, no regular post of

Pump Operator was available for his promotion.

5. On 21.03.2007 petitioner filed Complaint (ULP) No.57 of 2007 before Industrial Court, Jalna seeking a declaration that he is regular Pump Operator with effect from 25.02.2003 and that he should be paid pay-scale, wages, increments and arrears on that post from 25.02.2003. The complaint was resisted by the Municipal Council by filing his written-statement *inter alia* contending that respondent did not fulfill the eligibility criteria for appointment on the post of Pump Operator. The Municipal Council also pointed out that the manner in which respondent was directed to work on the post of Pump Operator on account of retirement of Mr. Kulkarni. The defence of staffing pattern was also raised.

6. The Industrial Court, by its judgment and order dated 04.08.2014, partly allowed respondent's complaint and has directed petitioner - Municipal Council to fix the pay of the complainant as per the pay scale provided for the post of Pump Operator. It has further been directed to pay wages to him from the date of judgment as well as arrears within two months. It must be observed here that though respondent had claimed for a declaration that he is a regular Pump Operator with effect from 25.02.2003, such declaration does not

seem to have been issued by the Industrial Court. Also the exact date from which the pay-scale of the post of Pump Operator is to be granted to respondent is also not specified in the order of the Industrial Court.

7. I have heard the learned counsels appearing for the parties and have perused the record of the case. It is undisputed position that the substantive appointment of respondent is on the post of Sweeper w.e.f. 19.12.1988. Vide letter dated 25.03.2003 a stop-gap arrangement was made whereby petitioner was directed to discharge the duties of the post of Pump Operator on account of vacation of the post due to retirement of Shri. L.P. Kulkarni. By no stretch of imagination can order dated 25.03.2003 be termed as the one appointing petitioner on the post of Pump Operator on regular basis. Petitioner-Municipal Council is a public body and appointments to various posts are governed by rules and regulations. Respondent did not make out any case before the Industrial Court that the post of Sweeper is a feeder post for promotion to the post of Pump Operator. He did not demonstrate before the Industrial Court as to what was the eligibility criteria required for filling up the post of Pump Operator and how he fulfilled the same. He did not make out a case that he was the senior-most eligible person available for being

promoted to post of Pump Operator. Therefore mere direction to discharge duties of the post of Pump Operator, by order dated 25.03.2003, did not effect regular promotion / appointment of the respondent on that post.

8. The staffing pattern for the Municipal Council was sanctioned by the State Government on 09.05.2005 whereby only three regular posts of pump Operator were sanctioned and rest 7 (possibly occupied by regular holders of the posts) were treated as temporary. It often happens when a reduction in number of posts of effected while sanctioning staffing pattern, posts already occupied in excess of sanctioned posts are treated as temporary till the incumbents vacate the posts on retirement/promotion. On account of reduction of regular posts of Pump Operator, there was no question of operating the post on which Respondent was directed to work. Respondent himself was fully aware that he was not holding the post of Pump Operator on regular basis and therefore made a representation dated 05.08.2005 seeking promotion as Pump Operator. The request was turned down by the Municipal Council by communication dated 25/29.08.2005 stating that as per the staffing pattern sanctioned by the State Government there was reduction of the posts of Pump Operator.

9. The Industrial Court, in my view, has completely misdirected itself while dealing with the case of respondent. The findings of the Tribunal that the staffing pattern was effective only for 5 years or that the same is not applicable to the post already filled up prior to the order are unsustainable. The Industrial Court has apparently not appreciated the concept of 'staffing pattern' as sanctioned by the State Government. The staffing patterns of various Municipal Corporations and Municipal Councils are determined by the State Government from time to time by balancing the requirement of work force with their revenues. Staffing pattern is not a permeant phenomenon. It keeps on changing from time to time. Therefore merely because the life of sanctioned staffing pattern was for five years, it does not mean that the post which was not sanctioned could be either operated or filled up by the Municipal Council.

10. The further finding of the Industrial Court about Petitioner's failure to prove respondent not possessing qualifications for the post of Pump Operator prior to 09.05.2005 is again completely erroneous. It was the responsibility of respondent to prove before Industrial Court that he fulfilled the eligibility criteria

for appointment on the post of Pump Operator. Not only this, he had to demonstrate the method of appointment to that post and that he was the senior-most eligible person for being promoted to that post. Perusal of the complaint filed by respondent shows complete absence of pleadings in this regard.

11. The finding of the Industrial Court that 'at that time no post of Pump Operator was of a permanent nature and on that permanent post the complainant came to be directed to do the work' is again completely erroneous. No doubt, the post of Pump Operator held by Mr. Kulkarni at the relevant point of time in the year 2003 was permanent one. However the same was not filled up on regular basis by direct recruitment or promotion of an eligible person after retirement of Mr. Kulkarni. The respondent was directed merely to discharge duties of that post. The regular post lapsed on account of reduction of posts in the staffing pattern sanctioned on 09.05.2005. Therefore whether the post was permanent in nature prior to 09.05.2005 was of little relevance for the purpose of determining Respondent's entitlement to get appointed on that post on regular basis.

12. The Industrial Court has thus committed an error in

partly allowing Complaint (ULP) No. 57 of 2007 filed by respondent. Respondent was substantive holder of post of Sweeper and was never appointed / promoted on the post of Pump Operator. Therefore, he is not entitled to be granted pay scale of the post of Pump Operator. The Industrial Court ought to have dismissed the complaint of respondent.

13. The judgment and order passed by the Industrial Court is thus indefensible and the same is liable to be set aside and is set aside. The writ petition is allowed. Rule is made absolute.

14. Pending Civil Application stands disposed of.

(SANDEEP V. MARNE, J.)