

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

WRIT PETITION NO.4570 OF 2008

Abhay S/o. Madhukarrao Dive
Aged about 45 Years,
Occ – Service,
R/o. 9-A, Corporation Colony,
Nagpur.

..... **PETITIONER**

...V E R S U S...

1. Member, Industrial Court,
Nagpur.
2. Nagpur Municipal Corporation,
Nagpur through Commissioner,
Civil Lines, Nagpur.

..... **RESPONDENTS**

Mr. J. L. Bhoot, Advocate for Petitioner.
Ms. T. H. Khan, AGP for Respondent 1/State.
Mr. S. S. Jachak, Advocate for Respondent 2.

CORAM: **ROHIT B. DEO, J.**
DATE: **20th APRIL, 2022.**

ORAL JUDGMENT:

The petitioner was initially appointed with the Nagpur Municipal Corporation, Nagpur (employer) as Laboratory Assistant with effect from 01.12.1984 on daily wages.

2. The petitioner contends that since the date of the appointment, he is in continuous employment.

3. In 1997 the employer resolved to regularize the appointment of the petitioner on the post of Laboratory Assistant. The petitioner was issued order dated 22.04.1998 where under he was appointed as Laboratory Assistant on regular basis. The said order was issued subject to the result of Writ Petition 643/1995.

4. It appears that prior to the issuance of the order dated 22.04.1998, the petitioner had preferred Complaint U.L.P. 1449/1993 seeking regularization, which came to be withdrawn.

5. While the petitioner accepted the regularization order dated 22.04.1998, he was not satisfied with the date of the benefit and instituted Complaint 185/2002. The Industrial Court dismissed the complaint by order dated 21.09.2007 on the premise that the subject of regularization is pending before the High Court in Writ Petition 643/1995. It would be relevant to reproduce paragraph 10 of the said order which reads thus:

10 : Now, coming back to the present case, the complainant was granted regularisation from the date 22-4-1998 by the respondent with a view to give effect to the interim order dated 30-6-1995 passed by the Hon'ble High Court in Writ Petition No.643/95. Therefore, the subject of regularisation is pending before the Hon'ble High Court and as such, the order of

regularisation of the complainant's services is subject to the decision of the said Writ Petition. Therefore, in view of this position the complainant's prayer for regularisation from the date of his initial appointment, is premature as the fact about his regularisation is subject to the decision in Writ Petition No.643/95. Therefore, the complaint is dismissed. Hence, the order.

ORDER

*Complaint is dismissed.
No order as to costs.*

6. Perusal of the order impugned reveals that there is absolutely no finding on the merits. The contentions are reproduced and then the complaint is dismissed on the ground that the issue is pending in the High Court.

7. It is common ground that contrary to what the Industrial Court noted, judgment in Writ Petition 643/1995 was pronounced on 22.03.2006 much prior to the order of the Industrial Court. This Court was pleased to dispose of the petition with a direction to the employer that the date of completion of 240 days of service from the date on which the names of the petitioners are included in the common seniority list be treated as the date of entry in service appointed on regular basis. However, this Court restricted such declaration only for the

purpose of calculation of pension and gratuity and no other consequential benefit was granted. It would be necessary to reproduce the directions issued by this Court in Writ Petition 643/1995.

“Hence, it is directed that the respondent – Corporation shall fix the date of respective petitioners after completion of their 240 days of service from the date on which their names have been included in the common seniority list as date of entry into service and the period from that date onwards shall be counted for the purpose of calculation of pension and gratuity only. Except this, the petitioners shall not be entitled to any other consequential benefit on account of such date.

8. It is not in dispute that the petitioner is similarly situated as the petitioners in Writ Petition 643/1995 in as much as his name is included in the common seniority list on 16.09.1993, and therefore, the date of entry into service shall have to be the date of completion of 240 days of service from the date on which his name is included in the common seniority list i.e. from 16.09.1993.

9. In view of the undisputed factual matrix noted *supra*, the petition will have to be allowed.

10. The order impugned is set aside.

11. It is declared that the petitioner's date of entry into the service of the Corporation shall be the date on which he completed 240 days of service from 16.09.1993. The date of entry as determined shall entitle the petitioner the same benefits as are granted to the petitioners in Writ Petition 643/1995.

12. Petition is allowed in the aforestated terms.

JUDGE

NSN