

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

WRIT PETITION (WP) NO. 830/2017

Ashok S/o Ganpatrao Jugade
Aged about 51 years, Occ: Service
Aged about 51 Years,
R/o: Navegaon Bandh,
Tahsil: Arjuni Morgaon, Dist: Gondia
(Orig Complainant)

..... PETITIONER

// VERSUS //

1. Industrial Court (Maharashtra)
Bhandara Bench Bhandara
Through Presiding Officer/Member
2. Krushi Utpanna Bajar Samiti
Arjuni Morgaon
Tahsil: Arjuni Morgaon
Dist: Gondia
Through Its Secretary/Chairman
(Orig Resp No 1)
3. District Deputy Registrar
Co. Operative Societies, Gondia
Dist: Gondia
(Orig Resp No 2)
4. Tikaram S/o Tulshiram Pustode
R/o: Bhiwkhidki
Tahsil: Arjuni Morgaon
Dist: Gondia
(Orig Resp No 3)

.... RESPONDENT(S)

Mr. Amol Deshpande, Advocate for the petitioner
Mr. Amit Madiwale, AGP for respondent nos. 1 and 3
Mr. S.K. Tambde, Advocate for respondent no. 2
Mr. Mohd. Ateeque, Advocate for respondent no. 4

CORAM : AMIT B. BORKAR, J.

DATED : 21/09/2022

ORAL JUDGMENT :

The petitioner is the original complainant who filed a Complaint bearing ULPA No. 58/2014 before the Industrial Court, Bhandara to enforce the compromise between the petitioner and respondent no. 2 in terms of the Award dated 05.03.2006. The terms of the compromise entered into between the parties are as under:-

- “1) The complainant shall be continued in service on temp basis by the respondents on the post of Market-cess-recoverer.*
- 2) The Complainant shall be entitled to monthly fixed wag of Rs.2500/- (maximum) payable with effect from March-2006.*
- 3) The respondents agree to maintain seniority list of t temporary employees and to include the name of the complaint in the seniority list as pr his seniority, i.e. date of his initial appointment.*
- 4) The respondents also agree to consider the complaint for absorption on any other vacant permanent clerical post if complainant otherwise has qualification for the said post.*
- 5) The respondents further agree to forward the proposal for regularization of the complainant in service to the Direc r of Marketing, M.S. Pune, as per the seniority list of temporary employees.*
- 6) The complainant agree to give up his claim regading unpaid back-wages.*
- 7) The complainant agrees to execute security bond on Stampaper in favour of the respondents as required under rules as the complainant is required to handle cash-transactions.”*

2. Since respondent no. 1 did not comply with the terms of the compromise, the petitioner issued a notice to respondent no. 2 requesting to regularize the petitioner's services. Despite the petitioner's letter dated 13.11.2014, the terms of compromise were not complied with. Therefore, the petitioner, on 24.11.2014, filed a complaint before the Labour Court seeking regularization of service by invoking Item No. 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "Act of 1971"). On 18.02.2015, respondent no. 2 filed a written statement stating that respondent no. 4 is more qualified than the petitioner and, therefore, was appointed. Respondent no. 3 also took the same stand by filing a written statement. The petitioner, therefore, applied to add respondent n. 4 as a party to the complaint. The Industrial Court allowed the said application on 24.11.2015. Respondent no. 4 filed a written statement and placed reliance on the order passed in Writ Petition No. 4009/2004. The Industrial Court, Bhandara, by an order dated 07.09.2016 dismissed the complaint holding that in terms of the order passed in Writ Petition No. 4009/2004, respondent no. 4 was a fresh appointment. The petitioner has, therefore, filed the present writ petition challenging the judgment and order passed by the Industrial Court. The undisputed facts relevant for the adjudication of the issue are as under:-

Respondent no. 2 agreed to absorb the petitioner on any other vacant clerical post permanently if the complainant is otherwise qualified for the said post. It is also agreed that the proposal for regularization of the petitioner shall be sent to the Director of Marketing as per the seniority list of temporary employees. In return, the petitioner agreed to give up his claim regarding unpaid back wages. After compromise, four posts became vacant, two to be filled up by the employees belonging to the Scheduled Caste category and two from the open category of employees. Out of which, one is to be filled by direct recruitment.

3. Respondent no. 4 was also a daily-wager employee like the petitioner, admittedly junior to the petitioner. The compromise between respondent no. 4 and respondent no. 2 took place on 10.10.2013. From the aforesaid undisputed facts, respondent no. 4 is an employee similarly situated with the petitioner and junior to the petitioner and the terms of compromise between respondent no. 2 and respondent no. 4 having entered into in the year 2013 as opposed to the terms of compromise between the petitioner and respondent no. 2 in the year 2006, respondent no. 2 was under obligation to consider the claim of the petitioner on the vacant post based on terms of the compromise entered in the year 2006. Respondent no. 2 did not dispute the petitioner's eligibility for a clerical post. The rights of the petitioner to seek

absorption in the vacant post crystalized the moment when the vacant post was created. Once the rights of the petitioner over the vacant post are crystalized, the claim of respondent no. 4 could not have been considered in the absence of a fresh vacant post. Therefore, the Industrial Court was not justified in dismissing the complaint on the ground that respondent no. 4 derived his rights under the terms of compromise dated 10.10.2013. I am, therefore, satisfied that the relief as prayed for by the complainant in terms of compromise deserves to be granted to the petitioner and, therefore, pass the following order:-

(i) Impugned judgment and order dated 07.09.2016 passed by the Industrial Court, Bhandara in Complaint (ULPA) No. 58/2014 is quashed and set aside.

(ii) Respondent no. 2 shall regularize the petitioner's services for the Clerk post within six weeks from today.

(iii) The petitioner shall be entitled to the consequential monetary emoluments from the date of creation of the post, i.e. 06.02.2015.

(iv) Since respondent no. 4 derived rights based on a compromise between respondent no. 2 and respondent no. 4 recorded by the Court, to give effect to the said compromise, respondent no. 2 shall send a proposal to the

Director of Marketing for the creation of posts of clerk with respondent no. 2. Said proposal shall be sent within four weeks from today.

(v) The Director of Marketing shall consider the said proposal in accordance with law and shall pass appropriate orders within eight weeks from the date of receipt of the proposal.

(vi) Considering the fact that respondent no. 4 was appointed based on a compromise recorded by the Court, respondent no. 2 shall not terminate the services of respondent no. 4 till the decision by the Director of Marketing as stated in previous clause (v).

4. Rule is made absolute in the aforesaid terms. No costs.

JUDGE

SANDIP
MAHADEV
GATE

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signed by
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2022.09.23
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