

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2381 OF 2022

Rajkumar Devidas Devkule

....PETITIONER

V/S

State of Maharashtra

....RESPONDENT

...

Mr. Vishal V. Dushing with Mr. Vaibhav Salvi for the Petitioner.

Mr. P.P. Pujari, AGP for Respondent No.1/State.

Mr. R.S. Khadapkar for Respondent No.4-Corporation.

...

CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 13, 2023.

P.C.:

1 By the present Petition, Petitioner challenges the judgment and award dated 27 March 2019 passed by the Presiding Officer, First Labour Court, Pune answering the reference in Reference (IDA) No.24 of 2012 in the negative. Petitioner is essentially aggrieved by the action of the Pune Municipal Corporation in not absorbing him in its service by treating him as an employee of Warje Gram Panchayat. It is Petitioner's case that all other employees of Warje Gram Panchayat have been absorbed in the services of Municipal Corporation, except him. He has construed such an action as termination of his services and with this grievance, filed Reference (IDA) No.24 of 2012 before the Labour Court, which has answered the Reference against him.

2 I have heard Mr. Dushing, the learned counsel appearing for the Petitioner, Mr. Khadapkar, the learned counsel appearing for the Respondent-Municipal Corporation and Mr. Pujari, the learned AGP appearing for the Respondent/State.

3 Petitioner claims to have been employed in the services of the Warje Gram Panchayat on the post of Peon since 23 September 1984. Reliance in this regard is placed on the Gram Panchayat Resolution appointing him as Recovery Clerk on monthly payment of Rs.200/-. It is Petitioner's case that he came to be confirmed as well as promoted on the post of Recovery Clerk by the Gram Panchayat on 18 March 1995. It is Petitioner's case that the State Government decided to absorb all employees of Gram Panchayats included into the territorial limits of the Pune Municipal Corporation in the services of the Municipal Corporation by issuing order dated 11 September 1997. Petitioner however complains that his name was deliberately omitted while sending the list to the Pune Municipal Corporation for absorption of the employees, on account of which he was not absorbed in services. Petitioner made various representations and finally raised demand letter dated 31 May 2011 to the Municipal Commissioner with a copy thereof to the Conciliation Officer. The demand raised by the Petitioner in the letter dated 31 May 2011 is as under:

- ‘अ) मला पुर्वेवत मागील नोकरी सलग धरून वरील कामावर घेण्यात यावे. किंवा पुणे मनपा मध्ये वर्ग, करण्यात यावे.
- ब) मला नोकरीतुन कमी केलेल्या दिवसापासुन पुन्हा नोकरीत घेण्यात यावे व त्या काळापावतोचा संपूर्ण पगार देण्यात यावा.’

4 Thus Petitioner essentially demanded that he should be reinstated in service from the date of termination with payment of full backwages. Alternately he prayed for absorption in the service of the Pune Municipal Corporation.

5 The learned Counsel appearing for the Petitioner has attempted to suggest that the termination referred in the demand letter dated 31 May 2011 is essentially non-continuation in services after absorption of all employees of the Gram Panchayat in the services of Pune Municipal Corporation. However, if the Affidavit-of-evidence of the Petitioner is perused he has made following statements therein:

‘वारजे ग्रामपंचायतीचे ग्रामसेवक व सरपंचाने व कार्यकारणी बॉडीने मी मागासवर्गीय असल्याने माझ्याबरोबर जातीवाद करून मला तोंडी अथवा लेखी कसल्याही प्रकारची नोटीस अथवा मेमो न देता काहीही न कळविता दि. २०/११/१९८९ रोजी कामावरून कमी करण्यात आले व माझ्या ऐवजी ग्रामसेवक, सरपंच यांनी त्यांच्या स्वतःच्या जवळच्या व्यक्तीचे म्हणजे संदीप खलाटे यांचे नाव प्रथम पक्षकार क. २ यांना कळविले’

6 Thus Petitioner led specific evidence before the Labour Court that his services were terminated on 28 November 1989. Thus the demand made by the Petitioner in letter dated 31 May 2011 for reinstatement from the date of termination relates to the alleged termination effected on 28 November 1989. Thus the main grievance of the Petitioner before the Labour Court was with regard to his termination effected on 28 November 1989. The reference made to the Labour Court by the Deputy Commissioner of Labour, Pune also related to his termination.

7 Though Petitioner claims that he continued to remain in the services of Warje Gram Panchayat till absorption of other employees, the Affidavit of evidence is silent about his reinstatement in service after termination on 28 November 1989. The Affidavit is silent as to how the Petitioner was reinstated in service after his termination on 28 November 1989. It is sought to be suggested by the learned Counsel appearing for the Petitioner that the certificate issued by the Gram Panchayat on 18 March 1995 clearly indicates that the Petitioner continued in services of Gram Panchayat. Reliance is also placed on letter of Pune Zilla Parishad dated 4 May 1999 to suggest that the Petitioner was reinstated in service with effect from 18 March 1995 by the Administrator considering the functional requirements of the Gram Panchayat. Here there is clear contradiction between the theories sought to be set up by the Petitioner. Petitioner has sought to contend that his initial appointment was on the post of Peon and that he came to be 'promoted' to the post of Recovery Clerk on 18 March 1995. However, in the letter dated 4 May 1999, it is sought to be suggested that the Petitioner was 'reengaged' by the Administrator of the Gram Panchayat considering the needs of the functional requirements of the Gram Panchayat. There appears to be clear inconsistency between the stand taken by the Petitioner. Be that as it may. In the Affidavit of evidence filed by the Petitioner, he has maintained silence about his reinstatement in service after termination on 28 November 1989.

8 Even otherwise contents of the certificate dated 18 March 1995 issued by the Administrator of the Gram Panchayat does not indicate, in any manner, that Petitioner continued in service of Gram Panchayat as on 18 March 1995. In fact the certificate states that the Administrator had permitted the Petitioner to undertake the work of tax recovery. If Petitioner was already in service of the Warje Gram Panchayat since 1984 as sought to be suggested, there was no necessity issuing certificate dated 18 March 1995 for so called 'appointment' on the post of Recovery Clerk. In the evidence Affidavit there is a specific admission by the Petitioner that the services were terminated on 28 November 1989.

9 Considering the overall conspectus of the case, it is seen that the Petitioner had miserably failed to prove before the Labour Court that he continued to be in service of Warje Gram Panchayat when decision was taken to absorb all employees of the Gram Panchayat in the services of the Municipal Corporation.

10 The learned Counsel appearing for the Petitioner has sought to criticize the finding recorded by the Labour Court about failure on the part of the Petitioner in proving various documents and non-exhibition of the same. Reliance is sought to be placed on the judgment of the Single Judge of the Delhi High Court in ***Sudir Engineering Company vs. Nitco Roadways Ltd.***, (1995) 34 DRJ 86 and Single Judge of this Court in ***Bharat R. Desai vs. Naina Mohanlal Bhal***, (2004) 2 Mh LJ 901. In my view, it is not

necessary to go into the aspect of proof of the documents in the light of the specific admission on the part of the Petitioner that the services were terminated on 28 November 1989. Even if the subsequent certificate issued by the Gram Panchayat on 18 March 1995 or the letter of Zilha Parishad are to be read in evidence, the same would not prove that the Petitioner continued in service of the Gram Panchayat after his termination on 28 November 1989.

11 I therefore do not find any patent error in the award passed by the Labour Court. Writ Petition, being devoid of merits, is dismissed with no orders as to costs.

(SANDEEP V. MARNE, J.)