

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 371 OF 2020

SANTOSH
SUBHASH
KULKARNI

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Eknath Balu Jadhav

...Petitioner

Versus

- 1 Chief Engineer, Kolhapur Zone,
Maharashtra State Electricity
Distribution Co. Ltd., Vidyut Bhavan,
Tarabai Park, Kolhapur
- 2 Superintending Engineer, Kolhapur
Circle, Maharashtra State Electricity
Distribution Co. Ltd., 1st Floor, Vidyut
Bhavan, Tarabai Park, Kolhapur
- 3 Executive Engineer (HR), Maharashtra
State Electricity Distribution Co. Ltd.,
Vidyut Bhavan, Tarabai Park, Kolhapur
- 4 Executive Director (HR), Maharashtra
State Electricity Distribution Co. Ltd.,
Prakashgadh, Bandra (E), Mumbai

...Respondents

Mr. Abhijeet Joshi, i/b Dattatraya Kulkarni, for the Petitioner.
Mr. Abhishek Khare, a/w R. P. Shirole, i/b Khare Legal
Chambers, for Respondent Nos.1 to 3.

CORAM: N. J. JAMADAR, J.

DATED : 14th MARCH, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the
Consent of the learned Counsel for the parties heard finally.
2. This petition under Article 227 of the Constitution of India
is preferred to question the legality, propriety and correctness of
the judgment and order dated 14th September, 2018 passed by

Industrial Court No.2, Kolhapur, in Company (ULP) No. 165 of 2015, whereby the complaint, alleging unfair labour practices within the meaning of Items 3, 5, 9 and 10 of Schedule IV of the the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (“the MRTU & PULP Act”), came to be dismissed.

3. Shorn of superfluities the background facts can be stated as under:

(a) On 1st June, 1994, the petitioner was appointed as an Artisan (Meter Reader) in the technical cadre of the then Maharashtra State Electricity Board (“MSEB”). On 6th June, 2005 the MSEB was trifurcated and Maharashtra State Electricity Distribution Company Limited was created. During the period 9th April, 2008 to 9th May, 2010 despite the petitioner being in the technical cadre, the petitioner was entrusted administrative duties of Upper Division Clerk (UDC). Vide Circular dated 30th May, 2011, the nomenclature of the post of Artisan A/B/C (Meter Readers) was changed to Assistant Machine Operator.

(b) On 21st October, 2011 vide internal notification the respondent proposed to fill up the vacancies of Lower Division Clerks (LDC)/Office Assistant from amongst the departmental

employees (Pay Grade-IV) working in technical and non-technical branches. On 31st October, 2011, the petitioner applied in accordance with the prescribed norms. The petitioner was placed at Serial No.129 of the candidates shortlisted for the written test. The petitioner appeared in the written examination held on 15th January, 2012 and successfully cleared the same. The petitioner was included in the final select list and was allotted Kolhapur Zone.

(c) The petitioner was, however, not given appointment to the said post. Eventually vide letter dated 13th July, 2012 the Superintending Engineer, Kolhapur Circle – Respondent No.2 informed the plaintiff that since the petitioner was holding a Grade-III post he was not appointed despite selection.

(d) The petitioner obtained information under Right to Information Act, 2005. It transpired that the respondents indulged in unfair labour practice in declining to appoint the petitioner despite his selection. Hence, the petitioner lodged Complaint (ULP) No.165 of 2015 for the unfair labour practices within the meaning of Items 3, 5, 9 and 10 of Schedule IV of the MRTU & PULP Act.

(e) After appraisal of the evidence, the learned Member, Industrial Court, was persuaded to dismiss the complaint

opining, *inter alia*, that no unfair labour practice was made out, as alleged by the petitioner.

4. Being aggrieved the petitioner has invoked the writ jurisdiction of this Court.

5. I have heard Mr. Joshi, the learned Counsel for the petitioner and Mr. Khare, the learned Counsel for respondent Nos.1 to 3, at some length. Perused the material on record including the impugned judgment and order.

6. Mr. Joshi fairly submitted that in the context of the facts borne out by the record, unfair labour practices within the meaning of Item 5 of Schedule IV only would be an issue for consideration. Amplifying this submission, Mr. Joshi strenuously submitted that the material on record indicates that the respondents had shown favouritism or partiality to a set of workers to the prejudice of the petitioner and thus the practice fell within the dragnet of unfair labour practice prescribed by Item 5.

7. Mr. Joshi further submitted that the learned Member, Industrial Court, was in error in negating the aforesaid claim of the petitioner on untenable grounds. Non-examination of the employees namely Mahire Pramod Fakira, Vitthal Kashinath Mukane and Ganpati Bapu Kamble, who were allegedly

appointed despite working in Grade-III, was unjustifiably arrayed against the petitioner. The said fact was established by the very documents issued by the respondents; veracity of which was unquestionable. In the circumstances, the unfair labour practice was writ large in appointing similar circumstanced employees to the post of LDC on the administrative side and denying the said dispensation to the petitioner. Mr. Joshi invited the attention of the Court the internal recruitment Notification dated 2nd November, 2010 furnished under Right to Information Act on 14th January, 2015. The name of Mr. Mahire Pramod Fakira finds mention at Item 13. His designation before appointment is shown Junior Machine Operator. Reliance was also placed on another communication which shows that Shridhar Bhagwan Kamble and Vitthal Kashinath Mukane were also working as Technicians and Senior Technicians, respectively before their appointment as LDC.

8. I have given careful consideration to the aforesaid submissions. The premise on which the petitioner was not appointed to the post of LDC was that the petitioner was from a technician cadre. According to the respondents, the appointment to the post of LDC from Group-IV employees was to

be made from those employees in the non-technical cadre. Indisputably, the petitioner was included in the list of candidates shortlisted for the written examination. The petitioner was included in the select list.

9. Without delving into the reasons which weighed with the learned Member, Industrial Court, it would suffice to note that it is not the case of the petitioner that any of the persons, who were included in the select list and were also from the technical cadre were appointed as LDC. It would thus be difficult to accede to the submission that the respondents had shown favouritism or partiality to another workman or set of workmen.

10. Mr. Joshi attempted to salvage the position by canvassing a submission that in the preceding and succeeding selection processes, persons from technical cadre were appointed to the post of LDC. I am afraid to accede to this submission for the reason that the favouritism or partiality has to be judged in the context of similarly circumstanced workmen.

11. The conspectus of the aforesaid discussion is that no interference is warranted in exercise of extraordinary writ jurisdiction.

12. Hence, the petition stands dismissed.

13. No order as to costs.

Rule stands discharged.

[N. J. JAMADAR, J.]