

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13641 of 2022

The Commissioner Kolhapur
Kolhapur Mahanagarपालिका,
Bhausingji Road, Kolhapur

...Petitioner

Versus

Sou. Shashikala Vijay Bhore
Age : 70 Years, Occ : Nil,
R/o Arvind Compound, House No.1245,
E Ward, Near Jayaraj Petrol Pump,
Kolhapur

...Respondent

...

Mr. Abhijit Adagule, Advocate for Petitioner.
Ms. Jayashree Tripathi, Advocate for Respondent.

...

CORAM : SANDEEP V. MARNE, J.
DATE : AUGUST 22, 2023.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. With the consent of the parties Petition is taken up for final hearing.
2. By this Petition Kolhapur Municipal Corporation has challenged order dated 03 January 2022 passed by the Industrial Court No.2, Kolhapur, directing it to deposit pension payable to the Respondent from the date of her retirement.

3. Respondent was appointed on the post of Staff Nurse by the Petitioner - Municipal Corporation on 21 December 1982. It appears that she remained absent from duties from 19 May 1995 to 28 February 1996 which led to her suspension. Departmental Enquiry was initiated against her vide Memorandum Charge-sheet dated 15 April 1997. In the enquiry, the charge of remaining unauthorizedly absent from duties for 287 days was proved. The Petitioner - Municipal Corporation therefore proceeded to terminate the services of Respondent by order dated 31 January 2000.

4. The Respondent approached Labour Court, Kolhapur by filing Complaint (ULP) No.204 of 2003 under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as for short "MRTU & PULP Act, 1971) challenging the termination order. During pendency of the complaint, Respondent retired on attaining the age of superannuation on 30 June 2008. After her retirement, the complaint was allowed by the Labour Court by its Judgment and order dated 8 October 2010 setting aside the order of termination. The Labour Court directed payment of back wages to the Respondent from the date of termination till the date of attaining the age of superannuation. The Revision Petition filed by Petitioner - Municipal

Corporation before the Industrial Court came to be rejected by Judgment and order dated 06 February 2016. The Petitioner - Municipal Corporation thereafter filed Writ Petition No. 14104 of 2016 in this Court challenging the orders of the Labour Court and the Industrial Tribunal. The Writ Petition was however rejected.

5. On account of non-payment of back wages and other service dues, Respondent was required to file application being Recovery (ULP) No.21 of 2016 before the Labour Court, Kolhapur. In her application she claimed various amounts including the back wages, pension, gratuity & suspension allowances etc. The complaint was partly allowed by the Labour Court by order dated 3 April 2018, holding that the order of Labour Court dated 8 October 2010 did not award suspension allowance, pension, gratuity, leave salary etc. Therefore the Labour Court proceeded to issue recovery certificate only in respect of back wages of Rs. 12,81,208/- by its order dated 3 April 2018.

6. Since the Petitioner - Municipal Corporation failed to pay pension and other pensionary benefits to Respondent, she was once again required to litigate by filing Complaint (ULP) No.39 of 2020 before the

Industrial Court, Kolhapur seeking pension and other pensionary benefits. By order dated 03 January 2022, which is impugned in the present Petition, the industrial Court has proceeded to partly allow the complaint directing the Petitioner - Municipal Corporation to deposit pension payable to the Respondent in respect of the period from 01 July 2008 till December 2021 in the Court. Petitioner - Municipal Corporation is aggrieved by the order dated 03 January 2022 and has filed the present Writ Petition.

7. Mr. Adagule, the learned Counsel appearing for Petitioner - Municipal Corporation would submit that the Industrial Court did not have jurisdiction to entertain the complaint filed by Respondent for payment of pension. That non-payment of pension is not covered by any of the items in Schedule-IV of the MRTU & PULP Act, 1971 and that therefore the complaint of Respondent was not maintainable. He would submit that this objection was specifically raised by the Petitioner - Municipal Corporation before the Industrial Tribunal which has not been properly decided. He would further submit that the Respondent was not awarded pension either by order dated 8 October 2010 or even in the Recovery Application decided on 3 April 2018. That, since the prayer of Respondent for payment of pension was specifically declined by order dated 3 April 2018, the Industrial Court could

not have entertained fresh complaint with regard to the grievance of non-payment of pension. The learned Counsel would submit that the Respondent being governed by the provisions of the Maharashtra Civil Services (Pension) Rules, 1982, she could not have approached the Industrial Court, which lacked jurisdiction to entertain the complaint. He would pray for setting aside the impugned order dated 03 January 2022.

8. Per contra Ms. Tripathi, the learned Counsel appearing on behalf of Respondent would oppose the Petition and support the order passed by the Industrial Tribunal. She would submit that the Respondent was permanent employee of the Petitioner - Municipal Corporation and having retired on attaining the age of superannuation on 30 June 2008 and she is entitled for the payment of pension and other pensionary benefits. That Petitioner - Municipal Corporation is repeatedly forcing Respondent to litigate for every dues. She would further submit that the Respondent's complaint with regard to termination was entertained by the Labour Court, whose order was challenged right up to this Court and that therefore Petitioner cannot now question the jurisdiction of the Industrial Tribunal in entertaining Respondent's complaint. She would pray for dismissal of the Petition.

9. Rival contentions of the parties now fall for my consideration.

10. There is no denial to the position that the Respondent was a permanent employee of Petitioner - Municipal Corporation, having joined service on the post of Staff Nurse on 21 December 1982. She was thrown out of service on 31 January 2000 on the allegation of remaining unauthorizedly absent for a period of 287 days during the years 1995 and 1996. The penalty imposed on the Respondent has been set aside by the Labour Court by its order dated 8 October 2010 with a further direction to pay back wages. The order of Labour Court dated 8 October 2010 has attained finality on account of dismissal of Revision as well as Writ Petition filed by the Petitioner - Municipal Corporation.

11. Thus on account of finality to the order dated 8 October 2010 passed by the Labour Court in Complaint (ULP) No. 204 of 2003, Respondent is deemed to have retired from service as a regular employee. Once the Respondent retired from service as a permanent employee, she became entitled for pension and other pensionary benefits payable under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. Nothing is brought on record by the Petitioner - Municipal Corporation to demonstrate that any disqualification is incurred by Respondent dis-entitling her for payment of pension or other pensionary benefits, under the Rules. Therefore

the action of Petitioner - Municipal Corporation in denying pension and other pensionary benefits to the Respondent is clearly arbitrary.

12. Now I turn to various objections raised by the learned Counsel for the Petitioner - Municipal Corporation. So far as the first objection of jurisdiction is concerned, it has two facets. Petitioner contends that the Respondent is not a workman and therefore could not have invoked jurisdiction of the Industrial Tribunal. This objection in my view is stated only to be rejected. The Respondent's status as workman remained undisputed on account of entertainment of her Complaint (ULP) No.204 of 2003 by the Labour Court whose order came to be upheld right up to this Court. If Respondent was not a workman, either the Industrial Tribunal in Revision or this Court in Writ Petition would have set aside the order dated 8 October 2010. Now that Respondent has retired and is made to litigate for payment of pension, I do not deem it necessary to venture into the enquiry about status of Respondent as a workman.

13. Coming to the next facet of objection relating to jurisdiction, it is submitted that non-payment of pension is not covered by any of the items in Schedule - IV of the MRTU & PULP Act, 1971. It is submitted that the complaint was filed by the Respondent alleging unfair labour practice under

items 9 & 10 of the Schedule -IV of the Act. It is submitted that items 9 and 10 relate to failure to implement award/settlement/agreement and indulging in act of force or violence and that therefore non-payment of pension or retirement dues is not covered either by item 9 or item 10. The submission canvassed by the learned Counsel for the Petitioner - Municipal Corporation may appear to be attractive in its first blush, however on deeper scrutiny has no legs to stand. Item 9 enlists unfair labour practice of failure to implement an award. By the order of Industrial Court dated 8 October 2010, dismissal/termination of Respondent was set aside. Since for dismissal/termination was set aside, she is deemed to have retired as a regular employee on attaining age of superannuation on 30 June 2008. Thus, as per the order dated 8 October 2010, the Petitioner - Municipal Corporation ought to have granted pension and other pensionary benefits to the Respondent. In that sense, the impugned action of the Petitioner - Municipal Corporation would be covered by item 9 of Schedule 4 to the MRTU & PULP Act, 1971. I have before me regular employee of the Municipal Corporation, who attained age of superannuation on 30 June 2008 and who is required to litigate continuously. It's been 15 long years since the date of her retirement and she is not yet paid pension. This aspect is required to be kept in mind while

deciding the issue of jurisdiction in filing a complaint under the provisions of MRTU & PULP Act, 1971.

14. The next objection of the learned Counsel for the Petitioner is about denial of payment of pension and other pensionary benefits by the Labour Court while deciding Recovery (ULP) No. 21 of 2016. I find the said objection to be completely misplaced. The recovery application was filed for recovery of amount under the order dated 8 October 2010. Since the order did not direct payment of pension, the Labour Court correctly restricted the recovery certificate only to the amount of back wages. Thus however would not mean that the Respondent, who retired as regular employee of the Petitioner - Municipal Corporation can be denied pension. Merely because Respondent erroneously claimed pension in her recovery application, the same would not destroy her lawful right to receive pension which is guaranteed under the Rules. The argument therefore has no merits and deserves to be rejected.

15. After considering the entire conspectus of the case, I have no hesitation in holding that the Respondent is entitled to payment of pension and pensionary benefits consequent to her retirement as a permanent employee on 30 June 2008.

16. This Court takes note of the conduct on the part of the Petitioner - Municipal Corporation, which is a public body and an ideal employer. It has made Respondent to litigate for the last 19 long years. Even though the termination/dismissal of Respondent was set aside by the Labour Court in the year 2010, she was denied pension and pensionary benefit. She was made to litigate before the Industrial Court in revision as well as this Court in Writ Petition. Even after the order dated 8 October 2010 was upheld, the Petitioner - Municipal Corporation did not implement the award and forced the Respondent to file Recovery Application before the Labour Court. Even after the Recovery Application was partly allowed, the payment of pension and pensionary benefits were denied thereby forcing her once again approach the Industrial Court by filing Complaint (ULP) No.39 of 2020. Even after the said complaint being allowed by the impugned order dated 03 January 2022, the Petitioner - Municipal Corporation has filed a present Petition thereby making Respondent to litigate further. Having attained the age of superannuation on 30 June 2008, the Respondent would be at an advanced age of about 73 years. She is made to survive without payment of any pension. For this conduct on the part of the Petitioner - Municipal Corporation, it is

required to saddled with costs while dismissing the present Petition. I accordingly proceeded to pass following order :

ORDER

- i) The impugned order of the Industrial Tribunal is upheld.
- ii) The Petitioner - Municipal Corporation is directed to pay the pension and pensionary benefits payable to the Respondent forthwith.
- iii) The Petitioner - Municipal Corporation shall pay to the Respondent costs of Rs.25,000/- within six weeks from today.
- iv) Writ Petition is accordingly dismissed.
- v) Rule is discharged.

(SANDEEP V. MARNE, J.)