

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14395 OF 2016

Municipal Corporation of Greater Mumbai
V/S

....PETITIONER

Mumbai Mahanagarpalika Karyalayin
Karmachari Sanghatna

....RESPONDENT

...

Mr. A.V. Bukhari, Senior Advocate, with Mr. B.V. Bukhari, Mr. R.Y. Sirsikar for the Petitioner-MCGM.

Mr. Prakash Devdas with Ms. Vidula S. Patil for Respondent.

Smt. Chitra C. Sawant, Joint Chief Personnel Officer and Smt. Tejashree D. Kamble, Administrative Officer, MCGM present in Court.

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CORAM: SANDEEP V. MARNE, J.

DATE : NOVEMBER 29, 2023.

P.C.:

1 The Petition is filed by the Municipal Corporation for Greater Mumbai challenging the judgment and order dated 13 April 2016 passed by the Industrial Court, Mumbai. The operative portion of the order reads thus:

- “1. Complaint is allowed.
2. It is declared that respondents have engaged in unfair labour practices under item 9 of Sch. IV of the MRTU & PULP Act.
3. The respondents are directed to cease and desist from engaging the unfair labour practice.

4. The alteration/modification made to the 1979 Rules of Promotion by circular dtd. 17.07.2010 and 28.04.2011 are declared as illegal and those circulars are set aside and quashed.
5. The respondents are directed not to impose the conditions of passing departmental examination to those employees who are graduates and promote them as per Rules of Promotion 1979.
6. Respondents are directed to consider all the applications for the post of clerk as per promotion rules.
7. No order as to costs.”

2 The grievance of the Respondent-Union before the Industrial Court was that the Petitioner-Municipal Corporation was proposing to fill up the post of Clerk by way of promotion by convening the selection comprising interalia of a written test. It was the demand of Respondent-Union that the promotions to the clerical cadre ought to have been effected by the Municipal Corporation without holding any written examination. With this grouse, Complaint (ULP) No.193 of 2011 was filed. The concept of holding written examination for effecting promotions to the clerical cadre in the Municipal Corporation was apparently introduced by way of circulars dated 17 July 2010 and 28 April 2011. The Industrial Court has proceeded to set aside the alterations/modifications made to the 1979 Rules vide circulars dated 17 July 2010 and 28 April 2011 and to that effect, the circulars have been set aside. The Industrial Court has further directed the Municipal Corporation not to impose the condition of passing departmental examination for effecting promotions to the clerical cadre.

3 The Petition was heard for sometime on previous occasion. Today when the Petition came up for further hearing, Mr. Devdas, the learned Counsel appearing for the Respondent-Union tenders an Affidavit dated 29 November 2023 on behalf of the Respondent-Union which reads thus:

“I Smt. Manasee Anand Kanitkar age 61 years Adult, Indian Inhabitant the Treasurer of the Respondent -Union having my Office at Municipal Head Office, Annexe Building. Basement, Gate No.7, Mahapalika Marg, Fort, Mumbai 400001, do hereby state on solemn affirmation as under:

1. I say that I am the Treasurer of the Respondent Union. I have been authorized to file the affidavit in reply to the above Petition. I say that I am well conversant with the facts of the case and such I am able to depose thereto.

2. I say that this Hon'ble Court has given the liberty to challenge the circular dated 24th May 2023 before appropriate forum, accordingly, the Respondent-Union has filed complaint before the Industrial Court Maharashtra at Mumbai.

3. I say that the three Unions i) The Municipal Union Code No.70, ii) Municipal Mazdoor Union Code No.1 and iii) Municipal Karmachari Kamgar Sena have already given consent to hold and conduct the departmental examination for Graduate employees in lower cadre for promotion to the post of Executive Assistants (Previously designated as Clerks) and promote on the basis of merits on marks obtained by them in the departmental examination.

4. I say that the Shri. Prakash Devdas, General Secretary of the Respondent-Union met the Municipal Commissioner and Administrator of Brihanmumbai Municipal Corporation, when it was suggested that the matter be closed.

5. I say that taking in to consideration already three unions have given consent and accepted the changes made in the rules that the graduate employees will have to undergo a departmental examination and on successfully passing the said examination, on

merits such employees will be promoted in the posts of Executive Assistants (Clerks), the suggestion of the Municipal Commissioner & Administrator and the delay caused to promotion of those lower cadre employees who have passed the departmental examination, the Respondent-Union has accepted the change in the Rule that the Graduate employees have to undergo a departmental examination and on passing the same on merit, the lower cadre employees will be promoted in the post of Executive Assistants (Clerks).

6. As regards the period of probation, I say that the same will governed by the Judgment of the Bombay High Court in WP/8711/2007 delivered by the then Hon. Justice Dr. D.Y. Chandrachud.

7. I say that as per liberty given to the respondent-union to challenge the circular dated 24.05.2023, they will be proceeded.

8. In view of this Hon'ble Court may be pleased to pass appropriate orders in the above Petition."

4 Since the Respondent-Union is agreeable to conduct of departmental examination for effecting promotions to the clerical cadre, the impugned judgment and order dated 13 April 2016 passed by the Industrial Court is liable to be set aside.

5 The only grievance that Mr. Devdas would raise about prescription of period of probation after effecting promotions to the clerical cadre. According to Mr. Devdas, the period of probation would be governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946. He would place reliance on the order of this Court in ***Sitaram Tukaram Walunj vs. Municipal Corporation of Greater Mumbai & Ors.*** in Writ Petition No.8711 of 2007 decided on 15 April 2008. In my view, the

Industrial Court has not really gone into the issue of period of probation consequent to promotion of employees to the clerical cadre. Therefore the issue about the exact period of probation is something which need not be gone into in the present Petition. All contentions of parties in that regard are kept open. The Respondent-Union as well as the affected employees would be at liberty to make an appropriate representation to the Municipal Corporation by inviting its attention to the judgment of this Court in *Sitaram Tukaram Walunj* (supra).

6 Accordingly in view of the Affidavit dated 29 November 2023 filed on behalf of Respondent-Union, the judgment and order dated 13 April 2016 passed by the Industrial Court is set aside and the Municipal Corporation is held entitled to conduct departmental examination for filling up promotional posts in clerical cadre.

7 With the above directions, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)