

Prajakta Vartak

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

WRIT PETITION NO. 9677 OF 2009

Nashik Municipal Corporation

..Petitioner

Vs.

Shri. Vijay Tarachand Shelar & Anr.

..Respondents

Mr. M. L. Patil for Petitioner.

Mr. Nitesh Bhutekar with Ms. Gargi Warunjikar and Mr. Aniket Nangare
for Respondent no.1.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 03, 2023**

P.C.:

1. The petitioner-Nashik Municipal Corporation being aggrieved by the judgment and order dated 31 March, 2009 passed by the learned Member, Industrial Court, Maharashtra, Nashik whereby complaint (ULP) No. 89 of 2005 as filed by respondent no.1 being allowed, has filed the present petition.

2. The relevant facts are :- Respondent no.1 filed the complaint in question, against the petitioner contending that the petitioner had indulged in unfair labour practices under items 5, 9 and 10 of schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labor Laws Practices Act, 1971 (for short, the “said Act”) and prayed for a relief of absorbing respondent no.1 on the post of as a computer operator. The said complaint was partly allowed by the impugned judgment and order. The operative part of the order passed by the learned Member of the Industrial Court is required to be noted which reads thus:-

“ ORDER

1. Complaint is partly allowed.
2. It is hereby declared that the respondent municipal corporation have engaged in unfair labour practices under items 5, 9 & 10 of schedule IV of the MRTU & PULP Act, 1971 from 11.3.2005.
3. Respondent Municipal Corporation is hereby directed to cease and desist from engaging in unfair labour practices under items 5, 9 & 10 of schedule IV of the MRTU & PULP Act, 1971 by absorption of the complainant on the post of computer operator w.e.f. 11.3.2005 in pay scale of Rs. 4000-6000/- within the period of one month.
4. There is no order as to cost.”

3. Respondent no.1’s case in the complaint is as under:-

That he possessed qualification of H.S.C. L.S.G.D. D.D.S. (Diploma in Computer Studies) of the year 1994, D.I.T. (Diploma in Information Technology) passed from C. Dac institute in 1999, D.C.A. (Diploma in Computer Application) in the year 1993. He belonged to the Schedule Caste. He was appointed by the petitioner on 13 February, 1995 as a Computer Operator in the Accounts Section of the petitioner-

Corporation. That the petitioner paid an honorarium of Rs.1,500/- per month, when in fact his appointment was on daily wages. From 01 February, 1997 he was continued in the service of the petitioner on daily wages without any order of continuation in writing by the petitioner. That from 01 February, 1997 till 19 February, 1999 he and other employees from his category were paid daily wages which were applicable to Class IV category. Such discrepancy was brought to the notice of the petitioner by the Assistant Commissioner (Accounts) and thereafter he and other employees working in the category of computer operators came to be paid daily wages at the rate of Rs. 67.55 per day in class III category. That till 30 April, 2003 from time to time, he was paid daily wages in the category of Class III employees. That from the date of joining till the date of filing of complaint in October 2004, he was working as a computer operator in the accounts section of the petitioner. The petitioner-Corporation passed a resolution in its Standing Committee as also the General Body dated 19 October, 2002 and 16 January, 2003, absorbing him and other employees working as Computer Operator in the category of Clerk / computer operator. He contended that as per the resolution passed by the General Body and the standing committee of the petitioner-Corporation, the other employees working as computer operators in class III category namely G.R. Raut,

Sunita Bachav, B.N. Gaikwad, Prashant Thombare, Sujata Bharambe, Udavant, Mahale, Mahendra Shirsat, Smt. Paithankar and Smt. Gagurde were absorbed as Clerks in Class III category, however he was absorbed as a Peon in the Class IV category by an order dated 17 May, 2003 w.e.f. 01 May, 2003 in the wage scale of Rs.2750-4400. These employees were absorbed in the category of Clerk in the wage scale of Rs. 4000-6000. He contended that he was possessing the required qualifications for absorption as computer operator/clerk as per resolution passed by the standing committee and General Body, however the petitioner had shown favoritism and partiality towards the other employees by absorbing them in Class III category and excluding him, thereby had committed unfair labour practice under items 5 of schedule IV of the said Act, in not absorbing him in the category of Class III as clerk/computer operator from 01 May, 2003. He contended that he was continuously working as a computer operator and the resolution passed by the standing committee and the General Body was clearly to his benefit. He also contended that at the relevant time, there were total 11 posts of computer operators which were vacant with the petitioner-corporation. He categorically contended that although he was absorbed as a Peon, he was continuously required to discharge the duty of a computer operator, that too when throughout a post of computer

operator was available. He thus contended that the action of the petitioner in not absorbing him on 17 May, 2003 along with other employees in Class III category of Clerk/Computer Operator, and instead absorbing him in Class IV category as “a peon” was patently illegal and discriminatory. Pointing out such discrimination, he submitted representations to the petitioner on 23 June, 2003, 25 February, 2004 and 15 September, 2004. However, although assurances were given to him by the petitioner that his case would be considered, no action was taken.

4. In these circumstances, respondent no.1 filed the complaint in question before the Industrial Court alleging unfair labour practices under items 5, 9 and 10 of schedule IV of the said Act as engaged by the petitioner, against respondent no.1.

5. The petitioner appeared in the said proceedings before the Industrial Court. Written statement was filed on 17 August, 2005. In reply to the case of respondent no.1 that he was discriminated to the effect that despite a post being available, he was not absorbed along with the others on 01 May, 2003, the case of the petitioner was of mere denial. The petitioner did not deny the fact of excluding

respondent no.1 from the absorption when the other employees who were similarly placed, were absorbed. Moreover, the petitioner avoided to address the issue of availability of a post and on absorption, as raised by respondent no.1. The petitioner also did not justify such action on its part much less as would be acceptable in law.

6. On the above premise, the Industrial Court proceeded to adjudicate the complaint and recorded its findings to the effect that respondent no.1 had proved that the petitioner had committed unfair practices under items 5, 9 and 10 of schedule IV of the Act. It was also held that the petitioner failed to prove that the complaint as filed by respondent no.1 was not maintainable. In paragraphs 14 and 15 of the impugned judgment and order, the Industrial Court observed that the record showed that respondent no.1 was working as a computer operator in the accounts section of the petitioner right from the inception i.e. from 1 August, 1995 to 30 April, 2003. It was observed that the record also indicated that there was resolution of the standing committee and General Board of the petitioner-Corporation to absorb respondent no.1 and other employees working as computer operators in the Class III category of clerk/computer operators and in pursuance of such decision, the other employees whose names are noted hereinabove,

were absorbed in Class III category vide an order dated 17 May, 2003 w.e.f. 01 May, 2003 in the wage scale of Rs.2750-4400. The Industrial Court also recorded a finding that respondent no.1 possessed all the requisite qualifications for the post of computer operator. Considering all these undisputed facts, the Industrial Court observed that there was substance in the case of respondent no.1 that there was unfair labour practice adopted by the petitioner against respondent no.1, as also there was discrimination in the process of absorption, namely that when respondent no.1 was to be absorbed as a clerk/computer operator, he was absorbed as a peon. It is on such premise although observing that there was some delay in filing of the complaint by respondent no.1, that is, in as much as, although the absorption of respondent no.1 as a peon was on 17 May, 2003 and the complaint being filed in October 2005, the Industrial Court considering that representations were made by respondent no.1 and taking a justice oriented view of the matter as reflected by the record, the Industrial Court opined that the complaint of respondent no.1 was required to be partly allowed for the reason that unfair labour practice of the petitioner against respondent no.1 had stood proved, and accordingly granted reliefs to respondent no.1 from the date of the complaint.

7. Mr. Patil, learned counsel for the petitioner in assailing the impugned order has limited submissions. The principal contention as urged by Mr. Patil is that respondent no.1 came to be absorbed only when the post was available which was created vide a Government Resolution dated 01 August, 2006. His submission is that after such Government Resolution was issued granting approval for creation of the posts of computer operators, respondent no.1 was issued an order of absorption/regularization as a clerk/computer operator in the Class III category. It is hence Mr. Patil's submission that it was not correct for the Industrial Court to come to a conclusion that there was any unfair practice when the post itself was not available.

8. Mr. Patil's second contention is in regard to the observations of the Industrial Court, as made in paragraph 15 of the impugned order, wherein the Industrial Court observed that although there is an unfair labour practice as indulged by the petitioner against respondent no.1, it needs to be accepted that respondent no.1 would be entitled for the relief of absorption on the post of computer operator from 11 March, 2005, namely, the date on which the complaint was filed. Mr. Patil submits that if such an observation is accepted then, it is a clear case that there was no prior unfair labour practice at the time of absorption

of respondent no.1 as a peon and respondent no.1 being subsequently absorbed on the post of computer operator, in pursuance of the Government Resolution dated 01 August, 2006. He, therefore, submits that the impugned order is required to be interfered on these two counts and the petition be admitted and the impugned order be stayed. These are the only two contentions as urged by Mr. Patil.

9. On the other hand, Mr. Bhutekar, learned counsel for respondent no.1 would submit that there was an apparent discrimination against respondent no.1 namely that when the other employees similarly placed as respondent no.1 came to be absorbed in pursuance of the policy decision taken by the standing committee and as approved by the general body of the municipal corporation, respondent no.1 was singled out. He submits that as rightly observed by the tribunal, there was no justification whatsoever for the petitioner-corporation as to why such treatment was being meted out to respondent no.1. Mr. Bhutekar submits that in fact, at all material times even when the other co-employees were being regularized, Class III posts were available. He submits that also the Government Resolution clearly approved the creation of all these posts, hence, in any event respondent no.1 was eligible for absorption along with other employees of the petitioner from

the date they were absorbed and had become entitled for absorption. He submits that for such reasons, there is no perversity in the findings as recorded by the Industrial Court and the petition is required to be rejected.

10. Having heard learned counsel for the parties and having gone through the record and the impugned judgment and order, I am not persuaded to any of the submissions of Mr. Patil. It appears to be quite clear that right from the inception i.e. from 13 February, 1995 respondent no.1 was working with the petitioner as computer operator. Although on paper a pay scale of Class III was sought to be awarded to respondent no.1, however, it appears that respondent no.1 along with other employees were paid daily wages. It also appears to be quite clear that in the year 2003 Municipal Corporation had taken a decision to absorb the services of such daily wage-computer operators and other category of daily wagers, which included the petitioner. The resolution of the standing committee was passed as also the same was approved by the General Body of the Municipal Corporation. It however appears that something went wrong for respondent no.1 at the stage when such benefit of the said decision was being granted to several other employees who were also working as computer operators, as respondent

no.1 was excluded from such benefit. There are no reasons forthcoming on record as to why respondent no.1 was excluded when others identically placed daily wagers were being absorbed as a one time measure. Surprisingly respondent no.1 being kept away from being absorbed as a computer operator in Class III category, to his dismay, he was absorbed as a peon. Certainly when others, who were working with him and who were similarly placed, were absorbed as computer operators (Class III), there appeared to be no justification to exclude respondent no.1. In these circumstances, respondent no.1 had made more than one representation, however, to his disappointment, the same were not considered. A responsible public body was expected to answer representations of its employees. The representations are not to be answered when there is something more than meets the eye. On such premise, the complaint in question was filed by respondent no.1 before the Industrial Court which has been allowed by the impugned order.

11. The only justification as sought to be urged by Mr. Patil on behalf of the petitioner is to the effect that there was no post available at the relevant time relying on the Government Resolution dated 01 August, 2006 to support such submission. However, a perusal of this Government Resolution would show that it does not assist the petitioner

in any manner whatsoever. From such Government Resolution, it is clearly seen that the State Government has granted an approval for creation of posts taking into consideration the resolution of the Municipal Corporation dated 19 October, 2002 and resolution of the standing committee dated 16 January, 2003 which included regularising all those who were working as computer operators, which included respondent no.1 and others. The Government Resolution ex-facie does not grant approval from a prospective date i.e. from the issuance of the said G.R. dated 01 August, 2006 which is clear from the fact that as to what was approved by the State Government was the proposal as forwarded by the Municipal Corporation which approved the decisions taken by the General Standing Committee and the General Body culminating into orders dated 17 May, 2003 granting absorption to those who were similarly placed as respondent no.1, as noted above. The said Government Resolution is thus in furtherance of the said decision of the petitioner to absorb all the daily wagers, who were in all about 1338 employees including all the computer operators. Thus, Mr. Patil's contention that earlier there was no post available is not well founded, and has been rightly rejected by the Industrial Court. If such contention of Mr. Patil is to be accepted then the effect is likely that there would be no warrant even for those who were absorbed to hold any post under

the said decisions of the Standing Committee and the General Body.

12. In so far as Mr. Patil's contention in regard to the observations as made by the Industrial Court in paragraph 15 of the impugned order are concerned, in my opinion, in fact, the Industrial Court would have been justified in the facts of the case to grant absorption to respondent no.1 w.e.f. 17 May, 2003, however, absorption has been granted to respondent no.1 w.e.f. 11 March, 2005 which is the date on which the Complaint (ULP) came to be filed by respondent no.1. Respondent no.1 has also taken a reasonable position that he is also not aggrieved by the said orders passed by the Industrial Court. Thus the observations of the Industrial Court in paragraph 15 of the impugned order does not in any manner affect the conclusion as arrived by the Industrial Court in accepting the case of respondent no.1 that there was unfair labour practice, in not absorbing respondent no.1 on the post of computer operator.

13. In the light of the above discussion and taking an over all view of the matter, I do not find any perversity whatsoever in the impugned order passed by the Industrial Court warranting any interference of the Court in exercise of its jurisdiction under Article 227 of the Constitution. The petition is accordingly rejected.

14. The petitioner-Corporation is directed to grant benefit to respondent no.1 as awarded by the Industrial Court within a period of four weeks from the day a copy of this order is available on the website of this Court.

15. No costs.

[G.S. KULKARNI, J.]