

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7404 OF 2017

The Commissioner, Nashik Municipal Corporation, ... Petitioner
Nashik

Versus

Mahendra Harishchandra Nathe & Anr.

... Respondents

Mr. Murlidhar Laxman Patil for the petitioner.

Ms. Pavitra Manesh i/b. Mr. Meelan Topkar for respondent no. 1.

CORAM: G. S. KULKARNI, J.
DATED: 10 January 2023

P.C.

1. This petition challenges the judgment and order dated 1 October, 2015 passed by the learned Member of the Industrial Court, Nashik whereby Complaint (ULP) No. 01 of 2010 filed by respondent no. 1 has been allowed in the following terms:

"ORDER

Complaint (ULP) No. 01 of 2010 is allowed.

It is hereby declared that the respondent has engaged in unfair labour practice within the scope of Item Nos. 5, 9 & 10 of Sch-IV of the MRTU & PULP Act, 1971 and respondent is directed to cease and desist from such unfair labour practices.

The respondent is directed to give the promotion to the complainant on the post of junior clerk w.e.f. 23.12.2009 with all consequential benefits, to which he is entitled under law, within one month from today."

2. Briefly the facts are that respondent no. 1 was working as a Malaria Field Worker in the Health Department of the petitioner since 22 March, 1993. Respondent no. 1 contended that he was entitled to promotion for the post of

Junior Clerk on the basis of seniority. Respondent no. 1 contended that he was qualified for appointment on the post of Junior Clerk, however, the petitioner has issued promotion to the employees who were junior to respondent no. 1 and in fact denied him promotion as a Junior Clerk. In these circumstances, respondent no. 1 approached this Court in Writ Petition no. 3746 of 2003, which came to be allowed by order dated 7 August, 2003 passed by the Division Bench of this Court whereby in paragraph 12 it was observed that respondent no. 1 must be treated eligible and his case for promotion to Class III must be considered on merits in accordance with law. However, despite such order passed by the Division Bench of this Court, it appears that promotion was denied to respondent no. 1 in the Promotion Committee Meeting held on 16/17 January, 2009. Thus, respondent no. 1 approached the Industrial Court at Nashik in Complaint (ULP) No. 12 of 2009. It appears that thereafter in a general body meeting resolution no. 1044 dated 7 February, 2009, it was resolved to promote respondent no. 1 to the post of Clerk on the basis of his qualification and eligibility, though he was entitled for promotion as per GR dated 10 May, 2005 and 13 March, 2007. However, formal order granting promotion to respondent no. 1 was not received and other 32 employees were promoted who are junior to respondent no. 1. as per resolution dated 1069 dated 23 December, 2009. In these circumstances, respondent no. 1 alleging that the petitioner had engaged in unfair labour practice under Item nos. 5, 9

and 10 of Sch. IV of the MRTU & PULP Act, filed the complaint in question before the Industrial Court.

3. During the pendency of the complaint, by an order dated 20 November, 2012 respondent no. 1 was granted promotion as Junior Clerk in pursuance of the resolution passed by the General Body of the Municipal Corporation held on 18 October, 2012. However, it had so transpired that as the complaint in question was pending, the petitioner received a communication dated 30 July, 2014 as extracted in paragraph 12 of the impugned judgment that the order of promotion dated 20 November, 2012 granted in favour of respondent no. 1 has been recalled on the ground that respondent no. 1 had not withdrawn his complaint as filed before the Industrial Court. In the above circumstances, the complaint was taken up for adjudication whereby respondent no. 1 alleged that such action on the part of the petitioner in withdrawing the promotion granted on 20 November, 2012 amounted to unfair labour practices. The Industrial Court after considering the rival contentions and materials placed on record observed that the case of respondent no. 1 that he is entitled to promotion to the post of Junior Clerk had merit as he was eligible for said promotion on the basis of his qualification and service of seniority. It was also observed that 32 employees who were junior to respondent no. 1 were promoted as Junior Clerks. The Industrial Court also observed that respondent no. 1 being eligible for promotion was also confirmed by the decision given by the petitioner by

issuing promotion order dated 20 November, 2012. In these circumstances, the Industrial Court rendered a finding that respondent no. 1 has not been treated fairly by the petitioner and that the charge of respondent no. 1 that the petitioner had indulged into unfair labour practice under Item Nos. 5, 9 & 10 of Sch. IV of MRTU & PULP Act has been proved and accordingly answered the issue in that regard in the affirmative.

4. Mr. Patil, learned counsel for the petitioner in assailing the order passed by the Industrial Court has limited submissions. He has sought to justify the order passed by the petitioner. With his assistance, I have perused the record as well as the impugned order. On the other hand, learned counsel for respondent no. 1 would support the finding as arrived by the Industrial Court.

5. Heard learned counsel for the parties and with their assistance, I have perused the record. In my opinion, it is quite clear that respondent no. 1 at all material times and as observed by the Industrial Court, was entitled for promotion to the post of Junior Clerk. It also appears that 32 employees who were junior to respondent no. 1 were granted promotion. It was not fair and reasonable on the part of the petitioner to withdraw the promotion which was granted to respondent no. 1 on 20 November, 2012 on the ground that respondent no. 1 has not withdrawn the complaint. In fact there was no condition whatsoever in the order dated 20 November, 2012 granting

promotion that respondent no. 1 should first withdraw the complaint. Thus, considering these circumstances, I do not find any perversity or illegality in the order passed by the Industrial Court. The petition is devoid of merits. It is accordingly rejected.

6. The petitioner is directed to make payment of benefits to respondent no. 1 as ordered by the Industrial Court within a period of four weeks the day a copy of the present order is available on the website of the High Court.

7. No costs.

(G. S. KULKARNI, J)