

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.392 OF 2020

Mr. Sanjay Dattatray Date] ... Petitioner

Versus

Uran Nagar Parishad & Anr.] ... Respondents

Mr. Rohit D. Joshi for Petitioner.
 Mr. G. H. Keluskar for Respondent No.1.

CORAM :- SANDEEP V. MARNE, J.
DATE :- 29 SEPTEMBER, 2023

P. C. :-

1. By this Petition, the Petitioner challenges the Judgment and Order passed by the Industrial Court, Thane, rejecting Misc. Application (ULP) No.8 of 2012. That application was filed by the Petitioner for recovery of an amount of Rs.1,54,750/- from Respondent – Uran Nagar Parishad over consequential monetary benefits during the period from 01/07/1993 till 01/02/1997.

2. Petitioner had instituted Complaint (ULP) No.381 of 1995 before the Industrial Court, Thane which was allowed by a Judgment and order dated 19/12/1996 directing the Respondent – Nagar Parishad to issue an order of permanency with effect from the date of completion of 240 days of service from the date of his initial appointment. The Respondents were further directed to pay consequential monetary benefits to the Petitioner arising from the benefit of permanency with retrospective effect.

3. It appears that towards implementation of the Order dated 19/12/1996, Respondent – Nagar Parishad took a decision, making Petitioner permanent on 01/02/1997. The Petitioner claimed that he had completed 240 days of service on 01/07/1993 and was entitled to be paid difference of wages during the period from 01/07/1993 to 01/02/1997. It appears that Respondent – Nagar Parishad rejected Petitioner's request by its Order dated 02/01/2001. Petitioner went on making representations. He finally approached the Industrial Court by filing Misc. Application (ULP) No.8 of 2012 for recovery of an amount of Rs. 1,54,750/- towards difference of wages during 01/07/1993 to 01/02/1997. The application was allowed by the Industrial Court merely on the basis of concession made by an official of Nagar Parishad vide Judgment and order dated 02/08/2013 and held that the Petitioner was entitled to recover the amount of Rs.1,54,750/- from the Respondents.

4. The Respondents filed Writ Petition No.1126 of 2016 before this Court challenging Tribunal's decision dated 02/08/2013. By Order dated 01/09/2016, this Court permitted the Respondents – Nagar Parishad to file an application before the Industrial Court for raising a contention that the concerned officer did not have authority to make concession before the Industrial Court. Accordingly, the Respondent–Nagar Parishad filed restoration application before the Industrial Court, which came to be allowed by and Order dated 28/07/2017 and Misc. Application (ULP) No.8 of 2012 was restored to its original position. The Tribunal thereafter heard Misc. Application (ULP) No.8 of 2012 and by its Judgment and Order dated 20/06/2018, was pleased to reject the same.

5. Mr. Joshi, learned Counsel appearing for the Petitioner, would submit that the Industrial Court has erroneously rejected Petitioner's

application on the ground of delay. He would submit that there was no delay in filing Misc. Application (ULP) No.8 of 2012. That the matter was under active consideration of the Respondent – Nagar Parishad who had sent a proposal to the Director of Municipal Administration for payment of consequential benefits to the Petitioner on 23/11/2007. Another proposal was sent on 05/06/2008. That in such circumstances, the Petitioner was not expected to approach the Industrial Court, when the matter was under active consideration of the Respondents. He would further submit that mere delay would not nullify the benefits arising out of Judgment and Order dated 19/12/1996, which directed payment of consequential monetary benefits arising out of permanency. That, such consequential benefits cannot be rejected on mere ground of delay.

7. I have also heard Mr. Keluskar, learned Counsel appearing for Respondent–Nagar Parishad, who would oppose the Petition and support the order passed by the Industrial Court.

8. After having heard the submissions canvassed by the learned counsels appearing for respective parties, it is seen that the Industrial Court had directed grant of benefit of permanency to Petitioner vide Judgment and Order dated 19/12/1996. However, the exact date from which the benefit was to be granted, was not specified. It was directed that permanency be granted from the date Petitioner completed 240 days of service from the date of his initial appointment. The Respondents were also directed to pay all consequential monetary benefits arising out of such permanency.

9. In his application filed for issuance of recovery certificate under Section 50 of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**), the Petitioner made following pleadings :-

“I say that I filed a complaint of unfair labour practices against the opponents and it was given registration number as Complaint (ulp) No.381 of 1995. I say that the Hon’ble Industrial Court was pleased to pass its final order on 19-12-1996 and was pleased to allow my complaint. I say that the Industrial Court had directed the respondents to make me permanent and pay me the benefits of permanency from the date I had completed of 240 days of service. The respondents bestowed upon me the status of permanency with effect from 01-02-1997. However, the respondents did not pay me the wages and allowances of permanency with effect from 01-07-1997 i.e. the day when I had completed the 240 days of service with the Respondents.

I say that after passing of the order from the Industrial Court, I had approached the Respondent No.1. I say that the respondent no.1, by its resolution resolved to make me permanent and such an order was made effective from 1st February 1997.”

10. From the above pleadings, an impression is created as if the Petitioner has been made permanent with effect from 01/02/1997. Similar statement is repeated in para 3 of the Petition, which reads thus :-

“The Petitioner states that pursuant to the said Order Respondents gave Petitioner the status of permanency with effect from 1st February, 1997.”

11. If the Petitioner is made permanent from 01/02/1997, why he claims monetary benefits from 01/07/1993 has not been explained in any manner. As per the directions of the Industrial Court, the Petitioner is to be paid consequential monetary benefits from the date of permanency. The Industrial Court has apparently not applied its mind to this aspect. It must be borne in mind that this aspect would have bearing on maintainability of Petitioner’s application for issuance of recovery certificate under Section 50 of the MRTU & PULP Act. In application under Section 50, he could not have sought permanency from an earlier date than the date from which the same is granted. However, this aspect

appears to have been glossed over by the Industrial Court. It appears that the Industrial Court has proceeded on an assumption that the Petitioner has been made permanent from 01/07/1993. However, it has proceeded to reject the Misc. Application (ULP) No.8 of 2012 on the ground of delay. In my view, the application could have been rejected on the ground that alleged erroneous implementation of the Industrial Court's Order dated 19/12/1996 could not have been agitated in application filed under Section 50 of the MRTU & PULP Act. It is Petitioner's own case not only in his Affidavit of evidence filed in Misc. Application (ULP) No.8 of 2012 but also in the present Petition that he has been made permanent with effect from 01/02/1997. Petitioner claims that he completed 240 days on 01/07/1993. However, this grievance is outside the scope of Section 50 of the MRTU & PULP Act. Therefore, the very maintainability of the application under Section 50 of the MRTU & PULP Act was questionable. However, it appears that this issue was not raised before the Industrial Court by either of the parties and the Industrial Court has proceeded on an erroneous assumption that the Petitioner is made permanent from 01/07/1993.

12. Mr. Joshi has placed on record copy of order dated 02/01/2001 passed by the Director of Municipal Administration by which services of 7 temporary employees were regularized. By that order, Petitioner has been granted the benefit of permanency with effect from 01/02/1997. This order dated 02/01/2001 may be in violation of the order passed by the Industrial Court on 19/12/1996. However, the remedy to question that order was not to file application under Section 50 of the MRTU & PULP Act, under which the Court can merely issue a certificate in respect of a quantified amount in pursuance of the order passed by the Industrial Court. In application under Section 50 of the Act,

the Industrial Court could not have undertaken enquiry about the date on which the Petitioner actually completed 240 days of service. In my view, therefore, the Petitioner adopted erroneous remedy by filing application under Section 50 of the MRTU & PULP Act as the Respondent – Nagar Parishad decided to make him permanent with effect from 01/02/1997 and not with effect from 01/07/1993. Thus, the real grievance of the Petitioner is about the error committed by the Nagar Parishad in granting him the benefit of permanency. It is Petitioner's case that he completed 240 days in service on 01/07/1993. If that is the case, the Petitioner ought to have exercised appropriate remedy in that regard.

13. Mr. Joshi has also placed on record copies of proposals sent by the Nagar Parishad in the years 2007 and 2008 to the Director of Municipal Administration for grant of benefit of permanency to Petitioner from the year 1993. The effect of those proposals can be considered in proceedings as and when filed by Petitioner for grant of permanency benefits w.e.f. 01/07/1993.

13. The present Petition is accordingly disposed of without disturbing the order of the Industrial Court dated 20/08/2018. However, the Petitioner shall be at liberty to adopt such legal remedy as may be available in law for grant of permanency with effect from 01/07/1993. If and when he is granted the benefit of permanency w.e.f. 01/07/1993, he would be in a position to claim monetary benefits for the period from 01-07-1993 to 01-02-1997 and the impugned order of the Industrial Court would not come in his way of claiming that benefit. Writ Petition is accordingly disposed of. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)