

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2707 OF 2019

1. Wasudeo S/o Shrawan Kurhade,
Aged about 57 years, Occupation:
Service (Contractual Labour) R/o at
Post Kurha, Tah. Tiwasa, Dist.
Amravati
2. Bharat S/o Karuji Shende, Aged about
57 years, Occupation : Service
(Contractual Labour), R/o Sultanpur,
Tah. Chandur Railway, Dist. Amravati

...Petitioners

// VERSUS //

1. Deputy Director of Health Services,
Akola Circle, Akola
2. District Malaria Officer, Amravati
Behind Daffrin Women Hospital,
Amravati, Tah. & Dist. Amravati.
3. Fileria Officer, Amravati Behind
Daffrin Women Hospital, Amravati,
Tah. & Dist. Amravati

... Respondents

Shri Amol B. Patil, Advocate for the petitioners.

Ms. H.N.Jaipurkar, AGP for the respondent nos. 1 to 3.

CORAM : ANIL S. KILOR, J.

DATED : 8th AUGUST, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The petitioners who have got superannuated during the
pendency of this writ petition, were working as 'Senior Field Workers'

under the respondents and their claims for regularization came to be rejected vide judgment and order dated 30th April, 2009 passed by the Industrial Court, Amravati in Complaint ULP No. 254 of 1996, the same is the subject matter of the present writ petition.

3. The petitioners were appointed in the year 1985 and they were continuously worked and they have the requisite educational qualification namely matriculation, they have not been regularized. Whereas, the juniors to them were regularized details of whom are given in the complaint under Section 28 read with Item No. 5 and 9 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred as “M.R.T.U and P.U.L.P, Act, 1971”)

4. The Industrial Court while denying the benefit of regularization has observed that merely because of other employees were at a lower rank in the seniority list is not sufficient to show that respondent nos. 1 and 2 had practiced favouritism or committed any unfair labour practice.

5. Once the learned Industrial Court has observed that juniors to the petitioners were regularized, the above referred finding is erroneous.

6. The learned Industrial Court has further observed that the petitioners have not completed 240 days in any year. It is pertinent to

note that in this matter there is a government policy to regularize such employees as per the seniority.

7. The learned Industrial Court in another matter relying upon the same policy declared vide Government Resolutions dated 2nd April, 1990 and 16th March, 1991, the regularization was granted to certain employees. As per the said Government Resolutions, there is no requirement of completing 240 days.

8. Another ground on which the regularization was denied, is that the petitioners have not submitted document showing that they have completed their matriculation. However, seniority list filed on the record Exhibit 47 shows that there is a mention about education qualification of the petitioners and it shows that they have passed Tenth standard. The said seniority list was prepared by the respondents and even in their reply to the complaint, this fact was not denied. In the circumstances, observation recorded by the Industrial Court that the petitioners failed to prove their matriculation, is contrary to the record and hence the said finding is perverse.

9. In another matter Complaint (ULPN) No. 1087 of 1996, the learned Industrial Court, Amravati vide judgment dated 7th January, 2013 while granting relief has observed thus:

32. From the record, documents and evidence coupled with the Government circulars and cross-examination of the respondents witness Shri Tarodekar, now it is clear that, the complainants are senior person than the other employees. They are eligible for training and they

have worked with the respondents, therefore, they are entitled for the regularization of the services/recruitment for the post of SFW where they were worked, however, relying on the judgements cited supra of the Hon'ble Apex Court and our High Court, I come to the conclusion that, the complainants are entitled for regularization in the services of SFW with retrospective effect with all benefits for any post in Class III category by holding that, the respondents are indulged in unfair labour practice by not recommending the name of the complainants prior to their age became barred. I further hold that, the respondents are industry and, therefore, the complaint under Section 28 is maintainable and this Court can try and entertain the present complaint. Hence I give my findings to issue nos. 1,2,4 and Additional Issues 4-A, 4-B and 4-C in affirmative and issue no.3 in negative. Hence, I proceed to pass the following.

ORDER

- 1) The complaint is allowed with costs.
- 2) It is hereby declared that the respondents are indulged in unfair labour practice, particularly Items 6 & 9 of Schedule IV of MRTU & PULP Act.
- 3) The respondents are directed to regularize the services of the complainants from the date of complaint on the post of S.F.W and to pay all the service benefits along with the arrears of difference of wages to the complainants within 3 months from the date of order by exempting the complainant for training.
- 4) No order as to costs.

10. In the aforesaid matter, the learned Industrial Court on relying upon the Government Resolutions granted regularization to the juniors. The names of juniors which are pointed out to the Industrial Court in the said matter are the same juniors which are referred to in the present petition.

11. Thus, in similar set of facts and circumstances, there are two orders of the Industrial Court granting regularization to one set of employees and denying to other set of employees.

12. The said judgment and order passed in complaint (ULPN) No. 1087 of 1996 was upheld upto the Hon'ble Supreme Court.

13. In that view of the matter, I am of the opinion that the relief of regularization cannot be denied to the petitioners as per the Government Resolutions dated 2nd April, 1990 and 16th March, 1991. Accordingly, I pass the following order.

i. The writ petition is allowed;

ii. The judgment and order dated 30th April, 2009 in Complaint ULP No. 254 of 1996 passed by the Industrial Court, Amravati is hereby quashed and set aside;

iii. The respondents are directed to regularize the services of the petitioners by giving deem date from the date the juniors of the petitioners were granted regularization. The regularization shall be considered for all the retiral benefits and not for claiming any arrears of difference of wages or salary.

iv. The respondents are directed to take steps to regularize as directed herein above and complete the process within eight months from today.

[ANIL S. KILOR, J.]

Digitally signed
by
SACHIDANAND
KUTTAN NAIR
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