



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

WRIT PETITION NO.5098 OF 2018

Municipal Council, Dhamangaon (Railway), thorough its Chief officer, Dhamangaon,
Dist. Amravati .Vs. Sanjay Chotelal Tiwari

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.G. Rathi, Advocate for petitioner.

Shri A.S. Dhore, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 30/10/2023

1. The respondent was working as a daily wager and as he completed 240 days before his termination on 20.06.2005, he filed complaint (ULP) No.53 of 2005 before the Labour Court, Amravati who has allowed the complaint and directed the petitioner to reinstate the respondent with continuity of service and 25% back wages. The revision petition against the same was dismissed vide judgment and order dated 20.11.2017 passed by the Industrial Court. The same is under challenge in this writ petition.

2. The learned counsel for the petitioner submits that, the post on which the respondent was appointed as daily wager was not a sanctioned post and he never completed 240 days in a preceding year. It is submitted that certain documents Exh. U-16 to U-19 are the documents

which are forged one. It is submitted that, both the Courts below have committed error in relying upon such document and granted relief of reinstatement.

3. On the other hand, Shri Dhore, learned counsel for the respondent strongly opposes the present writ petition and submits that, despite the fact that, the respondent was directed to produce the Mustar Roll, the respondent failed to produce the same and further it is submitted that, even the respondent failed to show that U-16 to U-19 are the documents not the genuine one but forged one. He further submits that, in absence of any evidence brought on record by the respondent to show that no right is created in favour of the respondent on completion of 240 days, both the Courts below have rightly allowed the complaint and set aside the termination order and directed the petitioner to reinstate him.

4. The learned counsel for the respondent has pointed out that, the petitioner was continuously working after reinstatement and he has already received the back wages granted to him. It is further submitted that, the proposal for regularization of the petitioner is pending with the Municipal Council, Administration, since 05.07.2022. He, therefore, submits that, there is no merit in the present writ petition and the same needs to be dismissed.

5. In light of rival contention, I have gone through the record and the impugned judgment and order.

6. From the record, it is evident that, the respondent led oral evidence on the fact of completion of 240 days and to establish the same by way of documentary evidence directions were sought to produce the record. The respondent despite such direction issued by the learned labour Court failed to produce the record. In cross-examination only one suggestion that the respondent has not completed 240 days was given.

7. Even in the evidence led by the Municipal Council, no document was brought on record contrary to the evidence given by the respondent that, he completed 240 days. Moreover, no justification has been offered for not producing the relevant record despite direction given by the Court.

8. As far as the documents U-16 to U-19 are concerned, the Chief Officer who entered into the witness box on behalf of the petitioner admitted that the seal on those documents is of the Municipal Council. He had further shown unawareness about the President or the Chief Officer who signed those documents. He further admits that, only because those documents do not bear any outward number, he referred those documents as fabricated one.

9. Thus, it is evident that, though it is the case of the petitioner that those documents are fabricated one, the petitioner failed proved the same.

10. Thus, considering the oral as well as documentary evidence produced by both the parties, I have no hesitation to hold that both the Courts below have not committed error in allowing the complaint.

11. In the circumstances, the writ petition is **dismissed**.

JUDGE