



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4863 OF 2005

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division-Latur, Dist-Latur.

.. PETITIONER

VERSUS

Prakash s/o. Devnath Bhagat,
Age-54 years, Occu-Service,
R/o. S.T.Quarter, B-2,
Ambajogai Road, Latur,
District-Latur.

.. RESPONDENT

...

Mrs.R.D.Reddy, Advocate for the petitioner.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 18.01.2024

ORAL JUDGMENT :

1] By way of present Writ Petition, the petitioner is challenging the impugned judgment and order passed by the Industrial Court, Latur in Complaint [ULP] No.(159/98) 97/2004 dated 24.12.2004.

2] It is the case of the petitioner that the petitioner is a Maharashtra State Road Transport Corporation. The respondent is working with the petitioner – Corporation as a Driver since 1981. He has also passed Departmental

Examination for the post of 'Assistant Traffic Inspector' [for short 'ATTI'] in October, 1995. The petitioner – Corporation has given temporary promotion to the respondent as an Assistant Traffic Inspector on 12.12.1997. But when it came into the knowledge of the Corporation that there is only one post reserved for Scheduled Caste category and including the respondent, there were total 04 candidates in the queue in which respondent is junior most candidate between them, therefore, his name was shown in the waiting list. Thereafter, the Corporation has given purely temporary promotion to the respondent by giving clear understanding that respondent can be reverted on his original post any time or as per the directions of the higher authority in this regard. As per the guidelines and settled law, 50% post are reserved for departmental candidates and 50% posts are kept open from outsiders category. Thereafter, the Corporation has withdrawn the promotion of the respondent from the post of Assistant Traffic Inspector and reverted him to his original post.

3] Being aggrieved with the order of withdrawal of the promotion by the corporation from the post of Assistant Traffic Inspector, the respondent filed complaint of unfair labour practice before the Industrial Court, Latur.

4] In response to the said complaint, the Corporation submitted that the promotion of the respondent

was temporary to the post of Assistant Traffic Inspector and it was noticed that only one post is reserved for scheduled caste category and including the respondent, there were total 04 candidates in the queue in which respondent is junior most candidate between them, therefore, his name was shown in the waiting list. Therefore, the Corporation has withdrawn the order of promotion of the respondent as Assistant Traffic Inspector and reverted the respondent back.

5] In the complaint [ULP] filed by the respondent the Industrial Court held that the respondent was a member of Scheduled Caste category. The Industrial Court has held that the candidate who was promoted on the post of A.T.I., is senior to him and therefore, the respondent has not committed unfair labour practice. Though, the respondent has not committed unfair labour practice, but the complainant has served as A.T.I. from 12.12.1997. His service is unblemished. He is qualified for the post of ATI. The complainant is working on the vacant post as ATI and he has served about 7 years on the said post and atleast till fresh candidate is appointed the Corporation has to keep the respondent on the post of ATI. The Tribunal has held that the Corporation has rightly reverted the respondent from the post of ATI. There is no challenge to this order of Tribunal by the respondent. However, the Tribunal has passed the following order :

ORDER

1] Complaint is dismissed.

2] However, respondent is hereby directed to adjust the complainant on the post of Assistant Traffic Inspector (A.T.I.) as the posts of A.T.I. are vacant with the respondent.

3] Under the circumstances of the case parties to bear their own costs.

6] The complaint filed by the complainant is dismissed. However, the Corporation by the impugned order was directed to adjust the complainant on the post of Assistant Traffic Inspector as the posts of A.T.I. are vacant with the respondent.

7] Challenging the clause no.2 of the final order dated 24.12.2004 of the Industrial Court, the petitioner – Corporation has filed the present Writ Petition and by interim order dated 28.07.2005, the said direction was stayed by this Court in terms of prayer clause-D.

8] The respondent is served, none has entered appearance on behalf of respondent.

9] The learned counsel for the petitioner submits that the complaint is dismissed and the right of the

petitioner to revert the respondent is upheld. Further the Tribunal has upheld that the appointment of the respondent on the promoted post was for a temporary period and that no wrong is committed by the Corporation in reverting the respondent. The learned counsel for the petitioner submits that once the action of the Corporation is upheld, the Tribunal erred in giving direction to adjust the complainant on the post of Assistant Traffic Inspector as the posts of A.T.I. are vacant with the Corporation. The learned counsel for the petitioner further submits that subsequent direction issued by the Industrial Court is erroneous in law.

10] Having considered the submission of the petitioner I am of the view that the Tribunal ought to have not directed to adjust the respondent on the vacant post of A.T.I., moreso when the action of the Corporation reverting the respondent was upheld by the Tribunal. The respondent was 3rd in the waiting list and cannot jump over the other wait list candidates. The Tribunal has also not examined the availability of promotional post in open category. The Tribunal at best could have given direction to consider the respondent in the event the post is available along with other eligible candidates. Thus, the direction of the Tribunal in clause (ii) of the final order is erroneous and illegal and is set aside.

12] Rule is made absolute in above terms. The present Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC