



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

WRIT PETITION NO. 2518 OF 1998

THE COMMISSIONER, LATUR CITY MUNICIPAL CORPORATION,
LATUR DIST. LATUR

VERSUS

KASHINATH SHIVAPPA RAJNALE

Mr. H. V. Patil, Advocate for petitioner

Mr. R. R. Deshmukh h/f Mr. R. B. Deshmukh Advocate for respondent.

CORAM : R. M. JOSHI, J.

DATE : 21st NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to judgment and order dated 14.08.1996 passed in Complaint (ULP) No. 324 of 1992 whereby the Industrial Court, Solapur has directed the petitioner to confer the status and privileges of permanent employee to the respondent / complainant in the post of Compounder on completion of 240 days of his service commencing from 01.01.1965. Further, direction is issued to pay all monetary benefits with retrospective effect.

2. The petitioner is Latur City Municipal Corporation. It is the case of the petitioner that the respondent / original complainant was an employee of Municipal Corporation with effect from 01.12.1964 in the post of 'Compounder' Pune at hospital run by the Corporation. It is claimed that he was drawing wages in the pay scale of Rs. 200/- to Rs.

280/- per month. The respondent / complainant filed complaint (ULP) before the Industrial Court bearing No. 324 /1992 claiming that with effect 01.01.1965 the then Medical Officer of the Council, by his oral order, has asked the complainant to render services in the post of compounder in the Pay Scale of Rs.260 /- to Rs. 495 /- per month. It is his contention that though he performed the said work from 01.06.1965 to 31.09.1985, he was not paid the salary for the said post. With these averments, complaint came to be filed alleging that the Municipal Council has committed unfair labour practices as contemplated by Item 5 and 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (For Short "MRTP & PULP Act").

3. In this complaint, a notice was issued to the petitioner/ original respondent. Though, through an Advocate, petitioner cause appearance, however, failed to contest the complaint. As a result of this, the complaint came to be allowed after about 4 years of its filing i.e., on 04.08.1996.

4. This petition is filed with the contention that the respondent/workman was not qualified/eligible to be appointed as a 'Compounder' and as such, he cannot seek any benefit of the said post. Though, such the contention is sought to be advanced on merit, there is

absolutely no pleadings in the petition, as to the reason for which the petitioner Municipal Corporation could not contest the complaint before the Industrial Court at relevant time.

5. Learned counsel for the petitioner vehemently submitted that the order passed by the Industrial Court is contrary to the law settled by the Hon'ble Supreme Court in case of ***Secretary, State of Karnataka and others Vs. Umadevi and Others, (2006) 4 SCC 1***. It is his contention that grant of any such relief of permanency in the post of Compounder would amount to a back door entry given to the complainant, which is not permissible in law. It is his submission that on this count alone, the present proceedings deserves to be relegated back to the Industrial Court for decision afresh. He also contends that he was directed to work as a Compounder from 01.06.1965, however, the complaint is filed after about 20 years. Thus, on this count also the complaint was not entertainable. According to him since the complaint was not contested, it is fit case to relegate the same to the Industrial Court for decision afresh.

6. Learned counsel for the respondent supported the impugned order by contending that it is not the case wherein petitioner Municipal Council/Corporation was not served with the notice by the Industrial Court. It is his contention that even in the petition, there is no

explanation given as to the reason for which the complaint was not contested. He drew attention of the Court to the findings of the Industrial Court wherein complainant about he being asked to perform the duties of Compounder-cum-Clerk and he having performing said duties till 1985. It would his contention that there are limitations to workman to raise dispute with regard to the non payment for the posts and as complaint is filed after a specific period of time & the complaint cannot be rejected on this sole ground.

7. It is a case of the petitioner that the complainant was not qualified to be appointed as a 'Compounder' and, therefore, his permanency in the said post is contrary to judgment of the Hon'ble Supreme Court in case of **Secretary, State of Karnataka** (cited supra). In this regard, it is pertinent to note that there is no dispute about the fact that the respondent/workman was in the regular employment of Municipal Corporation much prior to he being asked to work as 'Compounder'. Thus, this is not the case wherein backdoor entry is sought to be taken in the employment. Thus, in considered and respectful view of this Court, the judgment in case of **Secretary, State of Karnataka** (cited supra) does not support the contentions of petitioner.

8. At the first blush, this Court found submissions made on

behalf of petitioner for relegating back the proceedings to the trial Court worthy of consideration, however, having considered the facts and circumstances of the case in detail, this case is not found to be fit for re-hearing. The reason for not doing so, is that, the Complaint is filed in the year 1992, and it was decided in the year 1996. Whereas we are in the year 2024. Further, admittedly, the erstwhile Municipal Council has now been merged in the Municipal Corporation. As such, after a lapse of period of 32 years, practically it may not be possible for the parties to contest the said proceedings afresh. Moreover, prejudice and irreparable loss will be caused to the respondent/workman that he will be called upon to undergo rigors of the litigation once again and that there is no guarantee, owing to the pendency of cases at all levels of the judicial system that he will get any relief during his lifetime. He has already attained age of superannuation. This Court, therefore, is not inclined to relegate the matter back too. Apart from this, there is no just and sufficient reason given by the petitioner for its non appearance before Industrial Court. If the petitioner has chosen not to appear and contest the complaint, it is responsible for the consequences i.e., the order passed by the Court.

9. It is pertinent to note that though it is claimed by the petitioner that the complainant was not holding requisite qualification to

be appointed as 'Compounder', but the said work has been extracted from him by employer over a period of 20 years. Thus, in any event at least on the principle of equal pay equal work and on parity he is entitled for benefits of the said post.

10. The contention of the petitioner has gone unchallenged. The learned Industrial Court, therefore, had no other option but to accept the said contention. In the peculiar facts of the case, this Court does not wish to cause any interference in impugned order or relegate matter back to the Industrial Court for reconsideration. Hence, petition is dismissed as it sans merits.

(R. M. JOSHI, J.)

bsj