



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

WRIT PETITION NO. 4069 OF 1998 WITH
CIVIL APPLICATION NO. 5315 OF 1998 WITH CIVIL APPLICATION
NO. 2566 OF 2024

Nanded Waghala City Municipal Corporation
Nanded & another .. Petitioner

versus

Prakash s/o Madhavrao Yeole & others .. Respondents

Mr. V. D. Sapkal, Senior Counsel instructed by Mr. S. R. Sapkal,
Advocate for Petitioner.

Mr. T. K. Prabhakaran along with Mr. A. S. Kulkarni, Advocates for
Respondent Nos. 1 to 19.

Mr. A. P. Piratwad, Advocate for Respondent Nos. 20 to 22.

CORAM : R. M. JOSHI, J.

DATE : 14th NOVEMBER, 2024.

ORDER :

1. This petition takes exception to the judgment and order dated 29.07.1998 passed by Industrial Court, Jalna in complaint ULP No. 153/1997 whereby it was held that the Petitioner/Nanded Waghala City Municipal Corporation has committed unfair labour practice directed to restore complainants to their respective posts as held by them prior to order dated 13.08.1997.

2. Parties are referred to as Corporation and workmen/complainants.

3. It is the case of the complainants that atleast prior to 8 years of coming into existence of Municipal Corporation, they had joined the services with Nanded Waghala City Municipal Council in the year 1989. Subsequently, the Municipal Council was merged into Municipal Corporation. It is claimed that the complainants were working on the post in the erstwhile Municipal Council as senior clerk, supervisor, accountant, clerk etc. It is their case that the Municipal Council has passed resolution bearing dated 20.08.1996 promoting the complainants to the higher posts as per the rules and regulations. It is also claimed that the said posts came to be approved by the competent authority much prior to creation of Municipal Corporation. It is alleged by complainants that after the Corporation coming into existence with effect from 26.03.1997, the complainants were reversed from the promotional posts to the posts held earlier by order dated 13.08.1997. It is their grievance that no due process of law was followed, no notices were issued to the complainants nor any opportunity of hearing being accorded to them before taking action which is adversely affecting their service

conditions. On these contention, order of reversion of complainants was challenged by calling the same to be unfair labour practice committed by the Municipal Corporation.

4. The Municipal Corporation filed written statement by contending that no unfair labour practices are committed by passing order dated 13.08.1997. It is the case of the Corporation that the promotion given to the complainants by erstwhile Municipal Council was in violation of rules of promotion as well as norms of reference laid down by Government. It is contended that the complainants do not possess requisite qualification to hold promotion posts. It is alleged that resolution passed by Standing Committee of Council, beyond limit of human perception. Seniority of workmen of Corporation would affect. It is also claimed that said promotion since bad in law and illegal, the Corporation was justified in reverting the complainants to their original posts. The complaint is rejected on the ground of jurisdiction of Industrial Court.

5. Learned Industrial Court, by passing impugned judgment and order, has held that the Corporation is engaged in unfair labour practice as while reverting the complainants from the

promotional posts to the posts held earlier, due process of law was not followed and that no opportunity of hearing was granted to them. As noted above, order dated 13.08.1997 passed by the Corporation thereby reverting the complainants was set aside and they were directed to be posted in the promotional posts.

6. Learned Senior Counsel appearing on behalf of Petitioner has drawn attention of the Court to the case of the Corporation, which, according to him, entitles the Corporation to withdraw illegal and unlawful promotions granted to the complainants on the higher posts without following due process of law. It is his contention that after knowing the fact about the Municipal Council being merged into Municipal Corporation, the office bearers of the Municipal Council have passed illegal resolution on 20.08.1996 granting promotion to the complainants. It is his submission that the said act of promoting complainants was abinitio null and void and since it was in complete ignorance of all existing rules in the matter of appointment and promotion, the Corporation was within its right to revoke the same. These amongst other submissions he sought setting aside of impugned order.

7. Learned counsel for the complainants, on the other hand, submitted that even if the contention of learned counsel for Petitioner is accepted to be correct, it is not open for the Corporation to withdraw the promotions and revert the complainants to the earlier posts without following due process of law. It is contended that for effecting any adverse change to the service conditions, the law mandates notice of change under Section 9(A) of the Industrial Disputes Act. It is his further submission that even otherwise, before taking any action adversely affecting the complainants, minimum requirement to be complied by the Corporation was to issue at least show cause notice to them, which has not been done in this case. It is submitted that this clearly amounts to unfair labour practice as contemplated by Schedule IV of MRTU and PULP Act, 1971.

8. At the outset, this Court wishes to deal with the issue of jurisdiction of the Industrial Court in entertaining the complaint. The issue of jurisdiction is raised on the ground that the complainants are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act and as such the complaint filed by them is not maintainable. In this regard, it is pertinent to note that evidence was adduced by the complainants with regard to the nature of duties

performed by them. Apart from this, it is their contention that they are Class III employees in the clerical establishment and though some of them have been designated as officers or superintendent/octroi inspector, they did not perform any supervisory or administrative duties in order to exclude them from the designation of workmen. In rebuttal, Petitioner/original Respondent examined Municipal Commissioner vide Exhibit O-8. During his cross examination, it has come on record that the post of Tax Superintendent is not supervisory post and that complainant No. 2 is not having such supervisory powers. He also admitted the fact that Tax Inspector is also not a supervisory post. With regard to the other complainants, there is no dispute about the fact that they are performing clerical duties. Having regard to the definition of 'Workman' under Section 2(s) of the Act, unless the person is working in the administrative/managerial capacity and has control over other employees, he cannot be excluded from the said definition. The learned Industrial Court has taken into consideration the contentions of both sides as well as evidence on record in order to hold that it has jurisdiction to entertain the complaint. Petitioner was unable to make out any case to cause interference in the said finding.

9. It is not in dispute that the complainants were erstwhile employees of the Municipal Council which was merged with the Petitioner Municipal Corporation. From perusal of the record, it does not appear that there is any allegation against the complainants that they mis-represented in any manner, whatsoever to obtain the order granting promotions to them. The allegation is in respect of the resolution passed by the Municipal Council whereby the promotions were granted. There is objection of the Petitioner with regard to the said resolution that at the stroke of merger of the Municipal Council into Municipal Corporation, such resolution came to be passed which is per se illegal. Even if such contention of Petitioner is accepted, the fact remains that the complainants were granted promotion by the erstwhile employer by passing resolution. There is further no dispute about the fact that the complainants are working on the promotion posts since then.

10. There is undisputed employer and employee relationship between the complainants and the Corporation. Further, there is no dispute about the fact that the provisions of the Industrial Dispute Act govern the relationship between the parties. Section 9(A) of the

Act prohibits the employer from effecting adverse change in the service conditions of the workmen except following process as laid down therein. For the sake of convenience, said provisions are reproduced which read thus :-

Section 9A - Notice of change

No, employer, who proposes to affect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change--

(a) where the change is effected in pursuance of any 1[settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services

(Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

Bare perusal of this provision clearly indicates that there cannot be any change in the service condition of the workman/employee except they are issued with notice as contemplated therein. It is not in dispute that no notice under Section 9A was issued to the complainants before revoking their promotion and reverting them to their original posts. Such order passed by the Municipal Corporation adversely affect the service conditions of the complainants and as such it was obligatory on the part of the Corporation to issue notice under the above provision.

11. The complainants have alleged unfair labour practice under Item 9 of Schedule 4 of MRTU and PULP Act, 1971. Failure on the part of the employer to implement award, agreement and settlement amounts to unfair labour practice. Needless to say that the provisions of the act form part of the service conditions of the employees. Thus, the statutory provisions of Section 9A of the Industrial Disputes Act being not complied, clearly amounts to

unfair labour practice. The scheme of the Act, 1971 contemplates that whenever any unfair labour practice is said to have been committed by the employer, the Industrial Court is within its jurisdiction to call upon the employer to desist from such unfair labour practice. Once it is held that the action of revocation of promotion in contravention with the provisions of Section 9A of the Industrial Dispute Act amounts to unfair labour practice, the only course open for the Industrial Court is to set aside the order challenged before it.

12. Apart from this, it is pertinent to note that before taking any adverse action, the principles of natural justice require atleast a show cause notice to the complainants before revoking their promotions and reverting them back to the original posts. Admittedly, not even simple show cause notice has been issued to the complainants and they are denied opportunity of hearing and to justify the promotion given to them. On this count also, the order of reverting them cannot sustain.

13. This Court is conscious of the fact if promotions are granted illegally, it is within the right of the Petitioner to take

appropriate action in accordance with law for the purpose of revocation of such promotions. No Court can justify any benefits being given to the workmen which they are otherwise not entitled to receive in accordance with law. However, for that purpose, law mandates the employer to take appropriate action in accordance with law and not contrary to law. In such circumstances, though the present Petition deserves to be dismissed, it is open for the Petitioner/Corporation to take appropriate action against the alleged illegal promotions of the complainants, in accordance with law. Needless to say that it would be open for the Corporation to take action not only against workmen but also against those responsible for passing resolutions and granting promotions to the workmen.

14. In view of above, there is no merit in the Petition and the same is dismissed in above terms.

15. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge