



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2232 OF 2021

The State of Maharashtra Through
District Sports Officer And Others

VERSUS

Ramakant Apparao Kulkarni

...

Mr. S. B. Pulkundwar, AGP for the Petitioners/State

Mr. V. P. Golewar, Advocate for Respondent

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CORAM : R.M. JOSHI, J

DATE : JULY 31, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. This Petition takes exception to the judgment and order dated 29.04.2019 passed by Industrial Court, Latur in Complaint ULP No. 60/2017 filed by Respondent.

3. Respondent was appointed as Supervisor in the District Sports Complex at Latur by order dated 01.07.2004. He is continued in his service and thereafter claims to have been put in more than 240 days of continuous service in each year. He filed complaint ULP No. 60/2017 before Industrial Court, Latur for grant of regularization of his service on

completion of 240 days of initial service from the date of appointment and for consequential benefits. Petitioners appeared in the said complaint and filed written statement contending that Respondent is not working on clear vacant post and that he has not been appointed by following due process of law. It is claimed by the Petitioner that there is no employer – employee relationship between them and Petitioners are not appointing authority of the complainant.

4. Respondent led his evidence vide Exh. U-10 and contents of the complaint were reiterated. During the course of cross-examination, he admitted that in his appointment order dated 01.07.2004 it is mentioned that on the post which he is appointed is temporary in nature. He further accepted that there was no advertisement published for recruitment, however, he claimed that he called by Sainik Welfare Board and appointment is given through the Office of Collector, Latur. He is unaware as to whether the post of Supervisor is sanctioned post in the staffing pattern. Petitioners failed to lead any evidence, in fact none appeared on behalf of the Petitioners to lead evidence

or to make oral submissions before the Industrial Court. Industrial Court has held that the complainant came to be appointed as Supervisor with effect from 01.07.2004 and since then, he is in continuous and uninterrupted services of the Petitioner. As far as defence of the Petitioners is concerned, no evidence was led before the Industrial Court to substantiate the same. In the light of these facts, complaint came to be allowed wherein direction is issued to the Petitioners to forward the proposal for regularization of the complainant on the post of Supervisor or in equivalent post with effect from 02.08.2017 along with consequential benefits within two months from the date of order.

5. At the outset, learned AGP submits that the Petitioner was not represented before the Industrial Court and as such, the Petitioner has lost opportunity of proving its contention and to make submissions. On merit, it is submitted that unless there is appointment made of the complainant by following due process of law, he has no right to seek permanency/regularization in service. To support his submissions, he placed

reliance on the judgment of Hon'ble Supreme Court in case of Secretary, State of Karnataka and Others vs. Umadevi and Others, 2006 AIR (SC) 1806. He also placed reliance on the judgment of this Court in case of Medical Superintendent, Rural Hospital and Another vs. Rajashree Lakshman Yadav, 2024 DGLS (Bom.) 2358. Relying upon these precedents, it is his submission that since Respondent has admitted in his cross-examination that before his appointment no advertisement was published, his employment cannot be treated as regular.

6. Learned Counsel for the Respondent supported the impugned order on the ground that the facts of the present case and the judgments relied upon vary on material aspects. It is his submission that since Petitioners have failed to prove their contention before the Industrial Court, the order passed by the Industrial Court cannot be upset. With regard to the non appearance of the Petitioners before the Industrial Court, it is argued that there is no plausible explanation given for non appearance and without making sufficient cause, proceeding cannot be relegated back

on drop of hat. He further submits that Petitioner No. 1 is the Department of the State Government and it is not expected from the State to cause harassment to its subjects by not appearing before the Court and after any order is passed against it, seek remand of the matter.

7. At the outset, contention of the learned AGP needs to be considered about non appearance of the Counsel for the Petitioners before the Industrial Court. Perusal of the record indicates that Petitioners caused appearance in the complaint and also filed written statement. It is thus not the case that Petitioner had not received the summons and had no knowledge about the said proceedings. Thereafter is Petitioners chooses not to appear in the said proceeding and permits the proceedings to be culminated in passing of the impugned judgment and order, it cannot be said that the Petitioners were not given any opportunity of appearance and hearing in the said case. Complaint is filed in the year 2017 and after about period of two years same was decided. Thus, this is not the case that undue haste has been shown by the

Industrial Court in passing order. In absence of any sufficient cause being shown by the Petitioners for their non appearance before the Industrial Court after filing of the written statement, the request for remand cannot be considered. It cannot not be countenanced that for the fault of the Government machinery, the Respondent who has already attained age of superannuation, can be made to run from pillar to post and kept him waiting for his legal rights indefinitely. He is entitled to get the rightful benefits during his lifetime.

8. On merit, it is a specific contention of the complainant before the Industrial Court that he was appointed on 01.07.2004 on the post of Supervisor. There is no dispute made about this fact by the Petitioners in the written statement. It is however claimed that the said post was not sanctioned. The Respondent led evidence as initial burden is on him to prove his case before Industrial Court. His admission in the cross-examination about their being no advertisement issued before his appointment, cannot become a sole ground for dismissal of the complaint. It

is known fact that the appointments used to be done through employment exchange and the Respondent, who is ex-serviceman, claims that through Sainik Welfare Board his appointment is done through Office of Collector, Latur. He has also stated about having worked continuously for more than 240 days in each year to become eligible for regularization. Complainant/Respondent herein, therefore, has discharged his initial burden to prove that Petitioner has committed unfair labour practice. Once such burden is discharged by the Respondent, the onus has shifted upon the Petitioner to prove its contention.

9. Admittedly, there is no evidence led by the Petitioner before the Industrial Court. Thus, it is not proved that the appointment of the complainant was not against sanctioned post. Further, there is no evidence on record to indicate that the said appointment was without following due process of law. No doubt, Hon'ble Supreme Court in case of Umadevi (supra) held against regularization of the temporary employees only for the reason of their long continuation in service. In the instant case, though it is the case of the Petitioner

that Respondent was appointed on temporary post, however, the evidence of the Respondent clearly shows that he has worked for not less than 13 years and has put in continuous service up to more than 240 days in each year. Any backdoor entry in service is definately not permissible but in order to hold so, their ought to have been evidence led by the Petitioner before the Industrial Court. In absence of any evidence being led by the Petitioner to indicate that the appointment of the Respondent is not by following due process of law and not against sanctioned post, in respectful view of this Court the said judgment would not come to the aid of the Petitioner.

10. Similarly, in case of Medical Superintendent (supra) this Court was dealing with a situation wherein the appointment was done of the workman therein on the post which was vacated by a person who was deputed on training for one month. In the said case, employer had led evidence and on the basis of evidence led before the Court, it was held that the workman are the backdoor entrants into Government Service. The claim of the said workman was also rejected on the ground that

they had admittedly put in one or two years of service when the complaint was filed before the Court. Herein this case, Respondent has put in 13 years of service and now he has attained age of superannuation. Apart from this, there was evidence placed before the Industrial Court to indicate that the Government had taken policy decision and also passed Government Resolutions dated 18.07.2013 and 04.03.2014 Exhs. U-14 & 15 respectively wherein a decision is taken to grant regularization to the similarly placed daily wage workman by creation of post.

11. Considering the aforestated facts coupled with the Government Resolutions placed before the Industrial Court, the said Court has directed the Petitioner to forward a proposal for regularization of the Respondent on the post of Superintendent or any equivalent post and such directions issued in the impugned order cannot be faulted with.

12. Considering the aforestated facts, evidence on record and reasons recorded by the Industrial Court while granting relief to the Respondent, this Court is not inclined to cause interference therein in exercise

of writ jurisdiction. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani