

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3605 OF 2011

Hanumant Sudam Jadhav
V/s.

....Petitioner

Karmala Municipal Council,
through its Chief Officer, Karmala,
District-Solapur.

...Respondent

Ms Bhagyashri Mangale i /b. *Ms Shilpa R. Mangle for the Petitioner.*

Mr. Sarang Satish Aradhye with *Mr. Saarth Sunil Chokdia and Mr. Shantanu Gurav for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 2 September 2024.

P.C.:

1) By this Petition, Petitioner challenges judgment and order dated 9 November 2010 passed by the learned Member, Industrial Court, Solapur, dismissing Complaint (ULP) No.302 of 1995. The Complaint was filed by the Petitioner claiming status of permanent employee in the Respondent -Municipal Council.

2) I have heard Ms. Mangale, the learned counsel appearing for the Petitioner and Mr. Aradhye, the learned counsel appearing for the Respondent -Municipal Council and have perused the documents placed on record.

3) It appears that the Respondent -Municipal Council adopted Resolution dated 26 October 1993 for creation of 2 posts of Firefighter Drivers, 4 posts of Assistant Fireman and 1 post of Driver after

purchase of a Fire Tender through the loan sanctioned by the State Government. The Municipal Council engaged Petitioner and Shri Raosaheb Namdev Kamble to work as a Firefighter Driver for the period from 8 September 1995 to 7 November 1995 on daily wages of Rs.50. It appears that the services of the said two workmen were continued after expiry of period of two months. Petitioner and Shri Raosaheb Namdev Kamble filed Complaint (ULP) No.302 of 1995 and 303 of 1995 seeking the benefit of permanency in the services of the Municipal Council. It appears that the Complaints were unauthorisedly compromised at the instance of the then President of the Municipal Council, under which it was decided to appoint both the Complainants on the post of Driver. Accordingly, a compromise Pursis was filed before the Industrial Court on 27 March 1997. Respondent -Municipal Council challenged the order dated 27 March 1997 disposing of the Complaints on the strength of said compromise pursis by filing Writ Petition No.2431 of 1998 before this Court. It appears that the said Writ Petition was admitted and the order passed by the Industrial Court on the basis of the compromise pursis was stayed. During pendency of the Writ Petition No.2431 of 1998, services of Petitioner were terminated on 21 March 1998, which led to filing of Complaint (ULP) No.72 of 1998 challenging the termination order. The Complaint was allowed by judgment and order dated 13 March 2003 and Petitioner was directed to be reinstated in service alongwith full backwages and continuity. It appears that Petitioner was reinstated in service on 16 June 2003. By order dated 31 December 2003 passed in the cases of the Petitioner, Raosaheb Namdev Kamble and Kamlakar Suresh Bhoj, their services were directed to be continued.

4) Writ Petition No.2431 of 1998 came to be disposed of by this Court by order dated 6 April 2010 holding that the President of the Municipal Council, Karmala, could not have compromised the

Complaint. However, this Court granted leave to the Respondent - Municipal Council to settle the disputes with the employees and in the event of such settlement not taking place, the Industrial Court was directed to consider the Complaints on merits. Accordingly, complaints filed by Petitioner and Raosaheb Namdev Kamble bearing Complaint ULP Nos. 302 of 1995 and 303 of 1995 were remanded for fresh decision before the Industrial Court. It appears that the municipal council offered settlement to the two workmen and Shri. Raosaheb Namdev Kamble decided to accept the settlement and withdrew his complaint by filing withdrawal pursis dated 11 April 2011. Petitioner apparently did not take the decision for withdrawal of the Complaint, possibly on account of non-grant of backwages and decided to prosecute Complaint (ULP) No.302 of 1995. This is how while Shri Raosaheb Namdev Kamble came to be regularly appointed on the post of Driver from 16 June 2003, services of the Petitioner were terminated on 25 April 2011.

5) Mr. Aradhye, upon being queried as to why Shri Raosaheb Namdev Kamble was granted regular appointment with effect from 16 June 2003 by denying similar benefit to the Petitioner, he would clarify that after complaints were remanded by this Court vide order dated 6 April 2010, Shri Raosaheb Namdev Kamble decided to withdraw the complaint and agreed not to claim any backwages and this is how his services came to be absorbed in the Municipal Council from 16 June 2003. He would further clarify that so far as Petitioner is concerned, he decided to prosecute the Complaint (ULP) No.302 of 1995 and while the Municipal Council could have extended the same benefit to the Petitioner also, dismissal of his Complaint by impugned order dated 9 November 2010 prevented the Municipal Council from granting permanency to the Petitioner from 16 June 2003 as was done in the case of Shri Raosaheb Namdev Kamble.

6) Considering the chronology of the events, there appears no dispute to the position that Petitioner and Shri Raosaheb Namdev Kamble were similarly situated. Initial Complaints bearing (ULP) Nos.302 and 303 of 1995 filed by the duo were compromised by the President of the Municipal Council. After the compromise orders were set aside by this Court and Complaints were remanded on 6 April 2010, Shri Raosaheb Namdev Kamble withdrew his Complaint (ULP) No.303 of 1995 which earned him status of permanent employee from 16 June 2003. Merely because Petitioner continued prosecuting his own Complaint (ULP) No.302 of 1995, he has been denied the similar benefit. I therefore, do not find any valid reason for not granting similar treatment to the Petitioner as was granted to Shri Raosaheb Namdev Kamble.

7) Though the Industrial Court denied the relief of permanency to Petitioner on the ground of lack of requisite educational qualifications, the Industrial Court has erred in ignoring the position that the educational qualification decided in the year 1993 at the time of creation of posts was only 7 standard pass. Similarly, Shri Raosaheb Namdev Kamble appears to have been granted permanency on the post of Driver and I do not see any reason why the Petitioner can also not be granted absorption on the post of 'Driver', if there is any difficulty in absorbing him on the post of 'Firefighter Driver'. I, therefore, find the impugned order of the Industrial Court passed on 9 November 2010 to be indefensible.

8) The next issue that arises is nature of relief than can be granted in favour of Petitioner at this stage. Petitioner has worked continuously since 26 October 1993 till 25 April 2011. The date of birth of Petitioner is 1 June 1966 and he has apparently crossed the age of superannuation as is the case of Shri Raosaheb Namdev Kamble, who

has also retired from service on 31 May 2024. In my view, therefore, Petitioner also deserved to be granted same benefit as was granted in the case of Shri Raosaheb Namdev Kamble as treating him a regular Driver from 16 June 2003. However, considering the facts and circumstances of the present case, it would not be appropriate to put any financial burden on Municipal Council by directing payment of backwages from the date of termination till the date of retirement. If the entire service of Petitioner from 16 June 2003 is computed as qualifying service of pension, Petitioner would be entitled to pension and other pensionary benefits.

9) Petition accordingly succeeds partly and I proceed to pass the following order:-

- (i) Judgment and order dated 9 November 2010 passed by the Member, Industrial Court in Complaint (ULP) No.302 of 1995 is set aside.
- (ii) Petitioner shall be deemed to have been appointed on the post of Driver in the services of Municipal Council on permanent basis w.e.f. 16 June 2003 and his entire services from 16 June 2003 till the date of attaining the age of retirement shall be computed as continuous service only for grant of pension and pensionary benefits.
- (iii) Petitioner shall not be entitled to any backwages for the period from 25 April 2011 when he was terminated. In short, the relief of permanency is being granted only for the purpose of payment of pension and pensionary benefits and Petitioner shall not be entitled to be paid any backwages or dues of service from 16 June 2003 onwards.

(iv) Respondent-Municipal Corporation shall process pension papers of Petitioner forthwith and pay him pension and other pensionary benefits within a period of four months from today.

10) With the above directions, Writ Petition is partly allowed. Rule is made partly absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]