

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6186 OF 2008

1. The Member Secretary (Admn.)

Maharashtra Jeevan Pradhikaran

2. The Superintending Engineer and

Zonal Officer, Maharashtra Jeevan

Pradhikaran, Circle Pune, Pune-1

3. The Superintending Engineer

Maharashtra Jeevan Pradhikaran

Circle-Sangli. Sangli

4. The Superintending Engineer,

Maharashtra Jeevan Pradhikaran,

Circle-Kolhapur, Kolhapur.

5. The Executive Engineer, Maharashtra

Jeevan Pradhikaran, Kolhapur

}**Petitioners**

: Versus :

1. Shri. Gundu Appa Patil.

2. Member Industrial Court, Kolhapur

}**Respondents**

Mr. Tushar Sonawane, for the Petitioners.

Mr. Manoj Patil i/by. Mr. Ashish Pawar, for the Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 14 NOVEMBER 2024.

JUDGMENT PRON. ON : 26 NOVEMBER 2024.

JUDGMENT :

1) Petitioners have filed this Petition challenging the Order dated 11 August 2003 condoning the delay in filing Complaint (ULP) No.241/2003 and also the final Judgment and Order dated 10 June 2008 passed by the Industrial Court allowing the Complaint and directing grant of status to the Respondent on the post of Assistant Draftsman w.e.f. 16 July 1994 with all consequential benefits.

2) The Petitioners have impleaded the learned Member of the Industrial Court as Respondent No.2 and the Complainant has been impleaded as Respondent No.1 to the present petition. For the sake of convenience, the Complainant-employee is referred throughout the judgment as the 'Respondent'.

3) Facts of the case, in brief, are that Petitioners-Maharashtra Jeevan Pradhikaran executed water supply and sewerage projects throughout Maharashtra State for and on behalf of the local self-governing bodies. Its jurisdiction is divided into various zones and Pune zone is one of the zones established by the Petitioner which is further divided into

various circles. Pune Zone is divided in various Circles and Sangli Circle is one such Circle under Pune Zone. Sangli Circle had several divisional offices such as Kolhapur, Sangli and Satara. Respondent joined the services of the Petitioner on the post of Clerk in the year 1974. He was promoted as Tracer in 1979 and thereafter to the post of Assistant Draftsman in 1984. Petitioner was posted in Sub-Division No. 4-Kolhapur of Sangli Circle. The Sub-Division no.4 at Kolhapur was shifted due to non-availability of sufficient work at Yavatmal District. According to the Respondent, the employees working under Kolhapur Sub-Division no.4 protested against the action of the Petitioner and requested for their absorption in Sangli Circle instead of transferring them to Yavatmal. According to the Respondent, Petitioner decided to absorb the surplus employees of Sub-Division No. 4-Kolhapur in Sangli Circle. Accordingly, Respondent submitted application dated 16 July 1994 for his transfer at Ratnagiri. It appears that Respondent was not adjusted at Ratnagiri on the post of Assistant Draftsman. Under these circumstances, Respondent submitted application dated 16 July 1994 for his reversion on the post of Tracer for being retained at Kolhapur. Accordingly, Respondent was reverted from the post of Assistant Draftsman to the post of Tracer and was retained in Kolhapur Division.

4) It appears that while considering his case for repromotion to the post of Assistant Draftsman, the Respondent was asked to give willingness for being promoted as Assistant Draftsman at the available station. However, Respondent gave consent letter dated 30 March 1995 for his promotion at any place within Sangli Circle. It appears that similar consent was given by Respondent on 12 September 1995 for being promoted as

Assistant Draftsman at any station within Sangli Circle. According to the Petitioners, on account of Respondent's refusal to accept promotion and posting at the place of availability of vacancies, he could not be promoted as Assistant Draftsman and his juniors were so promoted. Respondent continued to function as Tracer at Kolhapur.

5) In the above background, Respondent filed Complaint (ULP) No. 241/2003 in Industrial Court, Kolhapur challenging his demotion to the post of Tracer as well as all promotions effected on the post of Assistant Draftsman after 16 July 1994. He prayed for status of Assistant Draftsman w.e.f. 16 July 1994 with all consequential benefits. The complaint was resisted by the Petitioners by filing Written Statement. The Industrial Court passed order dated 11 August 2003 condoning the delay in filing the Complaint. Both the parties led evidence in support of their respective claims. The Industrial Court has allowed the Complaint by final judgment and order dated 10 June 2008 by directing the Petitioners to give status on the post of Assistant Draftsman to the Respondent w.e.f. 16 July 1994 with all consequential benefits. Aggrieved by the order dated 11 August 2003 condoning the delay, as well as, final judgment and order dated 10 June 2008, Petitioners have filed the present petition. By order dated 22 September 2008, this Court admitted the petition and stayed the order of the Industrial Court clarifying that pendency of the petition shall not preclude the Petitioners from finalizing the pension papers of the Respondent, considering his status as a Tracer. Petitioner has retired from service on 31 May 2007 during pendency of the Petition. The petition is called out for final hearing.

6) Mr. Sonawane, the learned counsel appearing for the Petitioners would submit that the Industrial Court has grossly erred in entertaining and allowing the Complaint filed by the Respondent. He would submit that there was gross delay in filing the petition as the action of reversion of the Respondent took place on 16 July 1994 and therefore the complaint lodged in the year 2000 was clearly time barred. He would submit that the reversion of the Respondent to the post of Tracer was as per his own request made vide letter dated 16 July 1994. That Respondent opted for reversion to the post of Tracer with a view to retain his posting at Kolhapur. That after ensuring continuation of his posting at Kolhapur, he started efforts for his repromotion to the post of Assistant Draftsman within Sangli Circle and whenever promotions were to be effected to the post of Assistant Draftsman, Respondent specifically imposed a condition that he was willing to accept such promotion provided he was posted within Sangli Circle. That therefore the Respondent himself is responsible for not only his reversion to the post of Tracer, but also for his non-promotion to the post of Assistant Draftsman after 16 July 1994. By ignoring this position, the Industrial Court has erroneously directed grant of status to the Respondent as Assistant Draftsman from 16 July 1994. He would submit that the findings recorded by the Industrial Court suffer from the vice of perversity. That the Industrial Court did not appreciate the situation that Respondent refused to accept promotions at other stations and insisted for his promotion as Assistant Draftsman in Sangli Circle. He would therefore pray for setting aside both the orders dated 11 August 2003 condoning the delay, as well as final order dated 10 June 2008 allowing the Complaint.

7) The petition is opposed by Mr. Patil, the learned counsel appearing for Respondent No.1. He would submit that the Petitioners illegally used the pretext of transfer of Subdivision No. 4 from Kolhapur to Yavatmal for victimizing the Respondent leading to his reversion. He would submit that the Respondent had requested for his adjustment on the post of Assistant Draftsman at Ratnagiri by his letter dated 16 July 1994. That while other colleagues of the Respondent were adjusted at nearby stations, similar opportunity was not provided to the Respondent, who was left with no other alternative but to request for his voluntary reversion to the post of Tracer. He would rely upon order dated 16 July 1994 issued in the case of Shri. D.T. Otari and A.K. Yadav, by which both the Draftsmen were posted at Karad and Kolhapur (Gadhinglaj) respectively after transfer of subdivision Nos. 2, 3 and 4-Kolhapur to Umarkhed, Yavatmal, Pandarakwada respectively. He would further submit that after reversion of the Respondent as Tracer, he was not repromoted on the post of Assistant Draftsman whereas his juniors namely Shri. M.K. Dingre, Shri. K.R. Bhokare and Smt. V.V. Joshi were promoted as Assistant Draftsmen vide order dated 5 October 1995. He would submit that administrative approval was not taken of Sangli Circle while effecting illegal reversion of Respondent on the post of Tracer. He would heavily rely upon recommendations made by Superintending Engineer on 9 January 1988 for repromotion of the Respondent on the post of Assistant Draftsman by adjusting him in newly established subdivision at Kolhapur. He would submit that the recommendation letter dated 9 January 1998 clearly demonstrates the illegalities in illegal reversion of the Respondent as

Tracer. Mr. Patil would submit that the Respondent has suffered immensely on account of his illegal reversion as Tracer and was not promoted till he retired on attaining the age of superannuation on 31 May 2007. Mr. Patil would therefore pray for dismissal of the petition.

- 8) Rival contentions of the parties now fall for my consideration.
- 9) Respondent filed Complaint (ULP) No.241/2003 challenging the reversion order dated 16 July 1994, as well as all promotions effected by Petitioners to the post of Assistant Draftsman after 16 July 1994, and claiming status as Assistant Draftsman w.e.f. 16 July 1994 with all consequential benefits. Petitioner has raised objection about the delay in filing the complaint and has accordingly challenged the order dated 11 August 2003 condoning the delay in filing the complaint. True it is that there is substantial delay in challenging the reversion order dated 16 July 1994, as the complaint was filed on 1 March 2000. However, there are variety of reasons why there is no warrant of interference in the order passed by the Industrial Court condoning the delay. Firstly, Petitioners did not contemporaneously challenge the order dated 11 August 2003 condoning the delay. They took a calculated chance by opting for decision of the complaint on merits, which remained pending for five long years after passing of order dated 11 August 2003. It was only after the Complaint was allowed by the final judgment and order dated 10 June 2009, that the Petitioner thought of challenging the order dated 11 August 2003 condoning the delay. Furthermore, the aspect of Petitioner's reversion to the post of Tracer effected on 16 July 1997 and his repromotion to the post

of Assistant Draftsman was apparently under consideration of the Petitioners at least till 9 August 1998. This is apparent from the letter of the Superintending Engineer, Sangli addressed to the Regional Office at Pune on 9 January 1998, in which specific recommendation was made for re-promotion of the Respondent to the post of Assistant Draftsman with retrospective effect and his posting at newly formed Division at Kolhapur. Whether the recommendation vide letter dated 9 January 1998 was valid or not, is an altogether different issue. The said letter dated 9 August 1998 does however indicate that the issue of Respondent's reversion and repromotion was under consideration of the Petitioners at least till 9 January 1998. The outcome of the proposal dated 9 January 1998 is not known. However, the Regional Office at Pune must have taken some time in considering the said proposal and the Respondent was not expected to rush before the Industrial Court while recommendary proposal dated 9 January 1998 was still under consideration with the Regional office at Pune. Perusal of pleadings in para-15 of the Written Statement filed by the Petitioners would indicate that the Petitioner was advised to meet the higher officials at Pune on 29 February 1998. This action again shows that the proposal of the Respondent was under consideration. Considering the above position, I am not inclined to disturb the order dated 11 August 2003 condoning the delay in filing the complaint.

10) After condoning the delay, the Complaint which was lodged by the Respondent on 1 March 2000 got registered as Complaint (ULP) No. 241/2003. The Industrial Court has proceeded to allow the same by directing grant of status to the Respondent as Assistant Draftsman w.e.f 16

July 1994 with all consequential benefits. The validity of the final order dated 10 June 2008 passed by the Industrial Court is also under challenge in the present petition.

11) From narration of the facts in the preceding paragraphs, it is seen that the Respondent submitted application dated 16 July 1994 for his voluntary reversion on the post of Tracer and his reversion was effected as per his own request. The reasons for submitting application for reversion as Tracer on 16 July 1994 was non-availability of any post of Assistant Draftsman either at Kolhapur or any other station within Sangli Circle. It appears that Respondent did submit willingness on the same day i.e. 16 July 1994 for being adjusted as Assistant Draftsman at Ratnagiri. However, there is nothing on record to indicate that regular vacant post of Assistant Draftsman was available at Ratnagiri at the relevant time. The Respondent complains about grant of discriminatory treatment to him by relying on order dated 16 July 1994 by which Mr. D. T. Otari working in Sub-Division Nos. 1 and 2-Kolhapur came to be adjusted at Karad, whereas Shri. A.K. Yadav, Assistant Draftsman working in subdivision Nos. 1 and 3 was adjusted at Gadhinglaj, Kolhapur. There is no denial to the fact that Kolhapur subdivision nos. 2, 3 and 4 were directed to be transferred alongwith employees and officers to Umarkhed, Yavatmal and Pandarawada respectively. Respondent was working as Assistant Draftsman in subdivision no.4-Kolhapur which got transferred alongwith employees and officers to Yavatmal. So far as adjustment of Shri. D. T. Otari and Shri. Yadav is concerned, Petitioners have dealt with the said issue by explaining that Respondent was junior to both the employees and that therefore

preference was given to senior employees for their adjustments in nearby stations. Being aware of this position, Petitioner gave application for his voluntary reversion to the post of Tracer on the same day i.e. on 16 July 1997. In my view, therefore reliance of the Respondent on order dated 16 July 1997 transferring Shri. D.T. Otari and Shri. Yadav at Karad and Gadhinglaj is thus totally misplaced. Also, if Respondent perceived that he was discriminated by not granting adjustment at the nearby station, he ought to have filed appropriate proceedings challenging non-grant of posting as Assistant Draftsman at nearby station. Instead of doing so, Petitioner voluntarily submitted application for his reversion on the lower post of Tracer for the purpose of ensuring that his posting was retained at Kolhapur. Having done so, the Respondent could not have subsequently taken a *volte-face* and questioned non-grant of posting as Assistant Draftsman at nearby stations. I therefore do not find any merit in the contention of the Respondent that he was victimized or discriminated in the matter of non-grant of posting as Assistant Draftsman at nearby stations. The Respondent was apparently more interested in being retained at Kolhapur and therefore apparently gave up promotion to the post of Assistant Draftsman, which he had earned in the year 1984 and accepted reversion to the lower post of Tracer. The conduct of the Respondent after his reversion to the post of Tracer on 16 July 1994 also assumes importance. Being mindful of the fact that Respondent accepted reversion to the post of Tracer who gave up promotion earned by him as Assistant Draftsman 13 years ago in 1984, Petitioner did make attempts for his promotion to the post of Assistant Draftsman wherever vacant posts of Assistant Draftsman were made available. By letter dated 30 March 1995, Respondent's consent

was sought for being promoted as Assistant Draftsman at available vacant posts. However, by his letter dated 30 March 1995, Respondent gave consent for being promoted as Assistant Draftsman only in Sangli Circle. The consent of the Respondent was thus sought and there is nothing on record to indicate that any vacant post of Assistant Draftsman was available in Sangli Circle in March 1995. Again promotions were being effected to the post of Assistant Draftsman, letter dated 28 August 1995 was issued to the Respondent seeking his consent for being considered for promotion as Assistant Draftsman against available posts. The Respondent once again was intransigent and gave consent for his promotion as Assistant Draftsman only in Sangli Circle. It appears that at that time, the posts of Assistant Draftsman were available at Solapur, Shrirampur and Pimpri and accordingly three juniors of Petitioners Shri. M.K. Dingre, Mr. K.K. Bokare and Smt. V.V. Joshi were promoted as Assistant Draftsman by order dated 5 October 1995. Thus, non-promotion of Respondent as Assistant Draftsman by letter dated 5 October 1995 is owing to his intransigent attitude in not consenting for being posted and promoted either at Shrirampur, Kolhapur or Pimpri-Pune. The Industrial Court has not appreciated this aspect while recording following findings in para-10 of its final judgment and order which read thus:

10. The factual aspects which have been reiterated by the Complainant is an admissible position, and there appears no dispute about the same. The Complainant joined as employment of the Respondents, and lastly he was working as Asstt. Draftsman till 1994. Subsequently, by virtue of his application he was demoted as Tracer. In respect of the application of the Complainant about willingness to work on the lower post, legal position is crystal clear, which shows that without affecting the salary and allowances if demotion is given, that can be considered as legal and void if it is not by way of any punishment. But while giving demotion if the

salary and allowances are also brought down, in my opinion, that would not be proper, just and legal unless same demotion is by way of punishment. If at all, for was not of post any employee is willing to work in lower post for the sake of adjustment that cannot be considered as his willingness to work with lesser wages and allowances. The wages and allowances are required to be protected under any circumstances when the demotion is not by way of punishment. In the present matter, considering the situation prevailing at the relevant time, the Complainant appears to have given his willingness to work on the lower post, but that does not mean that he was demoted by virtue of any punishment or by virtue of loss of wages and allowances. In my opinion, the act of the Respondents of demoting the Complainant and reducing the wages and allowances definite amounts to putting the Complainant to back drive, and taking the work done on lower lever than his eligibility with lesser salary. This also pertinent to note that the Complainant was even not given the time bound promotion by virtue of working for 12 years in one post it appears that the respondents have treated and considered that the act of the Complainant of giving his willingness to work in the lower post of curtailing his all the rights and refusing him his legitimate rights. In fact it was the bounden duty of the Respondents to absorb the Complainant in the post in which he was working immediately or at the earliest as and when the position occurs and circumstances demand. The facts appearing in the matter on the basis of documents reveal that the Respondents have taken undue shelter of the willingness shown by the Complainant to work on the lower court. The said act, in my opinion, attracts item 9 of Sch. IV, which indicates that the service contract and conditions of service having been not implemented properly, but used the same according to the convenience which is not the right manner of considering the statute and service rules. Even if we consider the fact that other employees whose who were working at par with the Complainant prior to his application for demolition were duly considered and absorbed, but the Complainant appears to have been made as a scapegoat, which is not permissible in the eyes of law. At least at the subsequent time the Complainant could have reconsidered for absorbing in his original post, but that also does not appear to have been done by the Respondents. The act of the Respondents of absorbing a group of employees in regular post and not applying the said terms and conditions to the Complainant amounts to showing favourtism and partiality to one set of employees, and therefore, item 5 also attacks in his complaint. In my opinion, the Complainant on the basis of documents and pleadings, has established indulgence of the Respondent in unfair labour practice under Items 5 and 9 of Sch.IV of the M.R.T.U. & P.U.L.P. Act. Hence, I answer issue No.2 in the affirmative.

12) The Industrial Court has thus erred in holding that it was the bounden duty of the Petitioners to absorb Respondent on the post of Assistant Draftsman. It failed to appreciate that the Petitioners were willing to do so by posting him as Assistant Draftsman at Yeotmal. However, Respondent was not willing to leave Kolhapur. The findings recorded by the Industrial Court about reversion without affecting salaries and allowances and protection of salaries and allowances even after demotion are totally unsustainable. In my view, the Industrial Court has totally misdirected itself in allowing the complaint filed by the Respondent. The complaint is allowed by holding that reversion of the Respondent on the post of Tracer w.e.f. 16 July 1994 was illegal as per the bounden duty of the Petitioners to absolve the Respondent on the post on which he was working. The Industrial Court has erred in not appreciating the fact that the Respondent was trying his luck in seeking absorption as Assistant Draftsman in Sangli Circle and since he was unwilling to work anywhere outside Sangli Circle, he voluntarily requested for reversion to the post of Tracer. It appears that it was a call taken by the Respondent to give more importance to his retention at Kolhapur over retention of the designation as Assistant Draftsman. For him, continuation at Kolhapur was apparently more important than the promotional post of Assistant Draftsman and he accordingly chose the former over the latter. He possibly did so under a hope that he would earn back his promotion to the post of Assistant Draftsman. It appears that his chance of being promoted as Assistant Draftsman did arrive immediately on 5 October 1995 but this time again, the Respondent was incalcitrant and did not want to opt for promotion at Solapur, Shrirampur, Kolhapur and Pimpri. Thus, non-promotion of

Respondent to the post of Assistant Draftsman after his reversion on 16 July 1994 is clearly attributable to the conduct of the Respondent. In that view of the matter, the Industrial Court has erred in conferring the status of Assistant Draftsman to the Respondent from 16 July 1994. To that extent, the order passed by the Industrial Court is liable to be set aside.

13) Having held that Respondent could not hold the status of Assistant Draftsman from 16 July 1994, the next issue for consideration is whether the Respondent could continue to remain as Tracer forever. It appears that the Respondent has retired from service on 31 May 2007. In my view, therefore the limited relief that needs to be granted to the Respondent is to consider his case for promotion to the post of Assistant Draftsman against any vacant post that got created or against any vacancy that arose after 5 October 1995 in Sangli Circle. If Petitioners can locate any vacant post of Assistant Draftsman within Sangli Circle prior to retirement of Respondent on 31 May 2007, he must be repromoted to the post of Assistant Draftsman w.e.f. such date. Such course of action would ensure that Respondent does not permanently suffer in the matter of his pensionary benefits on account of impulsive decision taken on 17 July 1994 seeking his voluntary reversion to the post of Tracer. This Court is mindful of the fact that the Respondent joined the services of the Petitioner on the post of Clerk in 1974 and after having been promoted as a Tracer in 1979, he immediately got further promotion to the post of Assistant Draftsman in the year 1984. The Respondent thus worked as a Tracer only for five years from 1979 to 1984 and it would be unjust to make him work on the reverted post of Tracer from 16 July 1994 till 31 May 2007 when he retired on

attaining the age of superannuation. Therefore, while the benefits granted to him by the Industrial Court is being withdrawn, the least that can be granted in favour of Respondent is to repromote him as Assistant Draftsman from the date of accrual of vacancy at any station within Sangli Circle prior to his retirement. Such promotion be granted on notional basis, irrespective of the fact of promotion of any other employee on such post and no such promoted employee be reverted on account of grant of promotion to Respondent. This would ensure not only restoration of his status as Assistant Draftsman, but also drawl of retirement benefits on that post.

14) The Writ Petition accordingly partly succeeds, and I proceed to pass the following order:

- (i) The order dated 11 August 2003 condoning the delay in filing the complaint is not disturbed.
- (ii) Judgment and order dated 10 June 2008 passed by the Industrial Court, Kolhapur in Complaint (ULP) No.241/2003 is set aside and stands modified by following directions.
- (iii) If any vacancy of Assistant Draftsman got created within Sangli Circle after 5 October 1995 till Respondent's retirement on 31 May 2007, Petitioners shall promote him on the post of Assistant Draftsman w.e.f. from the date of availability of such

vacant post on notional basis, without disturbing promotion of any other employee.

- (iv) The Respondent shall be granted notional pay fixation w.e.f. from the date of his promotion as Assistant Draftsman till the date of his retirement on 31 May 2007 and his pensionary benefits shall be refixed accordingly. All arrears of pension and pensionary benefit shall be paid to the Respondent in accordance with his refixed last pay drawn within a period of 4 months.

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

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[SANDEEP V. MARNE, J.]