

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 789 OF 2024

Manmad Municipal Council,

Manmad through Chief Officer

V/s.

Shri. Ajay Namdeo Kumbharde

....Petitioner

....Respondent

Mr. Balkrishna Joshi, for the Petitioner.

Mr. Ajinkya Jaibhave, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 18 January 2024.

P.C. :

1. The challenge in the present petition is to the Order dated 12 October 2022 passed by the Member, Industrial Court, Nashik rejecting Revision Application (ULP) No. 34 of 2017. The Revision Application was filed belatedly after four years challenging the Order dated 3 August 2013 by which the Labour Court had refused to set aside the *ex-parte* Order dated 9 August 2006.

2. I have heard Mr. Joshi, the learned counsel appearing for the Petitioner and Mr. Jaibhave, the learned counsel appearing for the Respondents.

3. It must be observed at the very outset that the Petitioner-Municipal Council has been extremely negligent in defending itself in respect of the complaint filed by the Respondent before the Labour Court. When the complaint was filed challenging the alleged termination from service and seeking reinstatement, the Petitioner filed Written Statement taking a stand that Respondent was never appointed by the Petitioner. Instead of proving the said defence, the officials of the Petitioner-Municipal Council consistently remained absent before the Labour Court which was left with no alternative but to decide the Complaint of the Respondent in absence of any evidence being produced by the Petitioner. By its Order dated 9 August 2006, the Labour Court proceeded to set aside the termination Order dated 3 September 1998 with further directions to the Petitioner-Municipal Council to reinstate the Respondent in service.

4. Petitioners challenged the Labour Court's decision dated 9 August 2006 by filing Revision (ULP) No. 46 of 2007 before the Industrial Court. The Industrial Court however dismissed the Revision on 31 July 2008 granting opportunity to the Petitioner to apply for setting aside the *ex-parte* order. Accordingly, the Petitioner filed Application before the Labour Court for setting aside the *ex-parte* order dated 9 August 2006. By order dated 3 August 2013, the Labour Court proceeded to reject the said application. The Officials of the Petitioner-Municipal Council thereafter slept over the issue and woke up after four long years when they filed Revision (ULP) No. 34 of 2017 before the Industrial Court, Nashik. The Revision has been rejected by Order dated 12 October 2022 accusing the Petitioner of gross delay in filing the same.

5. The above chronology of events undoubtedly shows extreme negligence and casualness on the part of the Officials of the Municipal Council in prosecuting the entire litigation. In ordinary course, this Court would be justified in dismissing the present petition considering the conduct exhibited by the Officials of the Petitioner-Municipal Council.

6. Mr. Joshi, has however invited my attention to some of the documents to demonstrate that the General Body Meeting to which reference is made in the alleged Appointment Order of Respondent had never really taken place. He would also point out the discrepancy about date of appointment in the alleged Resolution of General Body and in the Appointment Order allegedly issued to the Respondent. In short, Mr. Joshi would cast serious doubts about authenticity of the alleged Appointment Letter relied upon by the Respondent. According to Mr. Joshi, though there may have been some negligence on the part of the officials of the Petitioner-Municipal Council, the public exchequer should not be made to bleed on account of the mistakes committed by the Petitioner-Municipal Council.

7. On the contrary, Mr. Jaibhave would submit that if indeed there was any fraud or forgery on the part of the Respondent in the matter of issuance of Appointment Order to him, the Petitioner-Municipal Council would have taken criminal action against the Respondent at the relevant time. That since no such action is taken, presumption of fraud or forgery cannot be raised.

8. Be that as it may. The Petitioner-Municipal Council has raised serious doubts about the very appointment of the Respondent in the Municipal Council. It is the contention of the Petitioner that the entire complaint of the Respondent is based on forged and fabricated documents. In my view, the Petitioner-Municipal Council must be given an opportunity to prove the defence before the Labour Court. For that purpose, the proceedings before the Labour Court are required to be reopened. It must be borne in mind that the Labour Court's order dated 9 August 2006 envisages payment of full backwages to the Respondent. Such a direction undoubtedly involves financial implications for Petitioner-Municipal Council. If indeed the Municipal Council is able to prove before the Labour Court that Respondent was never appointed, there would be no question of reinstatement of Respondent No.1 or payment of any backwages to him. In my view, therefore, an opportunity deserves to be granted to the Petitioner-Municipal Council to prove its defence before the Labour Court. At the same time, the actions of the Petitioner-Municipal Council in remaining negligent throughout the course of litigation cannot be ignored. Petitioner-Municipal Council is required to be mulct with costs for exhibiting negligent attitude in prosecuting the entire litigation.

9. I accordingly proceed to pass the following Order :

(i) The Orders passed by the Industrial Court on 12 October 2022 and by the Labour Court on 3 August 2013 and 9 August 2006 are set aside. Complaint (ULP) No. 223 of 1998 shall stand restored on the file of the Labour Court, Nashik who shall proceed to decide

the same afresh after grant of opportunity to the Petitioner-Municipal Council to cross-examine the Respondent and also to lead such evidence as it desires.

(ii) Petitioner-Municipal Council shall pay to the Respondent costs of Rs.25,000/- within a period of four weeks from today. Costs to be deposited in the Labour Court within the stipulated time.

(iii) Payment of costs shall be a condition precedent for reopening of proceedings.

(iv) The Labour Court shall expedite the hearing of the complaint and make an endeavor to decide the same as expeditiously as possible preferably within a period of six months from today.

8. With the above directions, the Writ Petition is disposed of with no order as to costs.

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
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SANDEEP V. MARNE, J.