

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 10225 OF 2017

Chhaya Sahebrao Sarode and others. ... Petitioners.

V/s.

Ulhasnagar Municipal Corporation and others. ... Respondents.

WITH
CIVIL APPLICATION NO. 2361 OF 2018

WITH
WRIT PETITION NO. 8157 OF 2018

Kalyan Gopal Ghoderao and and others. ... Petitioners.

V/s.

Ulhasnagar Municipal Corporation. ... Respondent.

WITH
WRIT PETITION NO. 7676 OF 2019

Ramesh Vitthal Ranadive and others. ... Petitioners.

V/s.

Ulhasnagar Municipal Corporation and another. ... Respondents.

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Mr.Sanjay Singhavi, Senior Advocate with Ms.Kumud A. Bhatia
for the Petitioners in WP No.10225/2017.

Ms.Shreeya Pednekar i/b. Mr.Akash Menon for the Petitioners in
WP No.8157/2018.

Mr.Kalpesh Patil for the Petitioners in WP No.7676/2019.

Mr.Sanjeev Gorwadkar, Senior Advocate with Suresh Kamble i/b.
Mrs. Sonia Miskin for Respondent Nos.1 to 3.

This order is corrected by speaking to minutes order dated 22 February 2024.

Ms.Neha Bhide, 'B' Panel Counsel with Ms.Nisha Mehra, AGP
for Respondent No.4.

Mr.Ajit R. Pitale with Ameya A. Pitale and Siddharth A. Pitale
for the Applicants in CAW-2361/2018.

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 5 February 2024.

P.C. :

Heard the learned counsel for the parties.

2. The Petitioners were working as Safai Kamgar with Respondent No.4- Ulhasnagar Municipal Corporation on temporary basis. According to them, they worked till 2020 with a temporary artificial break for a short period. They made request to the Corporation on several occasions to absorb their services on permanent basis. The Respondent - Corporation prepared a seniority list of the Safai Kamgars who had worked from 1987 to 1999 on temporary basis. The Petitioners names appeared in the said list. According to the Petitioners, meetings took place between the Petitioner - Union and the Respondent- Corporation whereby it was agreed that 305 posts of Safai Kamgars would be filled in by way of seniority list with an enquiry and publishing the same on notice board calling upon the suggestions.

3. Since no progress took place, a Complaint (ULP) No.134/2007 was filed before the Industrial Court, Thane through Akhil Bhartiya Safai Mazdoor Congress on behalf of the Safai Kamgars of the Municipal Corporation for declaration that the act of the Respondent- Corporation amounted to unfair labour practice. In Complaint No.134/2007, the Industrial Court on 25 January 2010 passed the following order:

“ The present complaint, which is filed by the complainants, under item nos.5 & 9 of schedule iv of the MRTU & PULP Act regarding permanency.

2. In between period so many documents have been filed by the rival parties, and also the order was passed regarding appointment of Investigating Officer for preparation of seniority list, regarding the workers concerned in the proceeding working in the respondent corporation. As no proper steps have been taken by either parties to satisfy the Investigating Officer, Hence it was not possible for the Investigating Officer, of this court to submit the seniority list after perusing all the relevant documents and facts placed on record. Thereafter as per the directions issued the respondent corporation have placed on record the seniority list of about more than 5000 Class IV employees i.e. Safai Kamgars and same is filed below list exhibit C-16. After perusing the contents of the said seniority list prepared and filed on record by the respondent corporation and after perusing the contents by all the respondents in the proceedings along with complainants they have also submitted seniority list below exhibit U-51 regarding first 620 employees from the above said seniority list which have been filed by the respondent stating therein that there is some discrepancies in the names, surnames and fathers name in the said list. So accordingly the same also needs to be rectified especially father's name and surname. As the seniority list which is prepared by the respondent corporation is as per their wage bills and their

contention is that the said names are also correct. But it is a fact on record before the said name in some cases fathers name end surname is missing and hence for the said purpose the complainants have placed on record the said list along with list exhibit U-51 and also along with same, some documents have been placed on record below exhibit U-53 showing discrepancies in the names and various orders issued by the respondent corporation to the workers concerned. As the workers are same but only in some cases father's name and surnames is missing.

3. Today when the matter was called for the complainant and all other respondent unions have filed application below exhibit U-55 stating therein the contents accordingly which also needs to be treated as part and parcel of the operative part of this order and in reply to the same the respondents have also placed on record the application exhibit C-19 and have also stated on the application filed below exhibit U-55 that court may pass the appropriate orders considering the contents of the application. Hence thereafter hearing the submissions of the rival counsels and respondents, I have no difficulty to consider the said application and dispose off the present complaint accordingly as prayed in the application below exhibit U-55 and respondent corporation is hereby directed to consider the contents therein and after getting the required rectification in the names and surnames, as stated in the said application below exhibit U-55 the orders be issued to the workers concerned on the vacant posts which are in existence and will be likely to be created in the near future as per the requirements be recruited considering the seniority list filed below exhibit C-16. In the respondent corporation as per the existing seniority list which is there on record at list exhibit C-16 and U-51 accordingly. Again I repeat that the contents of the application filed below exhibit U-55 be considered as part and parcel of the operative part of this order. Hence this order and accordingly the complaint is disposed off as prayed by the rival parties.

The Respondent- Corporation filed Writ Petition No.7060/2010 challenging this order passed by the Industrial Court, Thane.

4. In this writ petition the matter was referred for the mediation. The learned Mediator submitted his report as under:

“ The issue om Writ Petition was regarding permanency to the employees on whose behalf of the original complaint (ULP) No.134 of 2007 was filed.

The Corporation Officials and Union Representative had discussions over the issue. The Corporation Officials stated that the list of daily wages employees already prepared and finalized and all of them are back door entrants and cannot be regularized as of right. They further contended that the employees from said list do not fulfill the eligibility criterion and hence cannot be considered, without the said conditions being relaxed by the State Government. The Corporation officials stated that the Corporation would commence recruitments process by giving public advertisement and the eligible enlisted daily wages employees may apply in response thereto.

The Union Office bearers and Adv. Avinash Belge and Adv. Kirankumar Phakade representing them, opposed this and stated that there are 305 vacant posts and about 620 daily rated employees from the list of 5170 employees are eligible for permanency and regularization. The Unions wanted these employees to be given preference since they were working for more than 15-20 years with the Corporation on daily wages. The Unions also want the Corporation to undertake the process of filling up the posts at the earliest since more employees would become age barred if the process is delayed.

As and by way of interim measure during the pendency of the Writ Petition, it was agreed between the parties that the Corporation would issue public advertisement and follow the recruitment procedure laid down by law at the earliest, for

filling the vacant posts in Class-IV category. The daily wages employees from the list, who are working and who satisfy the eligibility criterion i.e. age, education, qualification, etc. would apply in response to the said advertisement. The Corporation shall give preference to the said employees as per their seniority, while giving appointments. It was also agreed that the Corporation shall send requisite proposal to the State Government for creation of Class-IV posts after getting the approval from the General Body.”

Pursuant to the Mediation Report, consent terms were filed by the parties. They agreed as under:

- “1) The petitioners hereby agree to fill the 395 vacancies in respect safai kamgars in the corporation as per the guide lines of the Honorable Supreme Court.*
- 2) That both parties hereby agree to implement mediation Report dated 14/02/2014 filed by the mediator Adv. Mr.M.S. Topkar.*
- 3) The Respondents undertakes to withdraw their complaints bearing No.ULP 134/2007 pending before the Honorable Industrial Court within one month from filling the consent terms.*
- 4) The Petitioner undertake to withdraw the writ petition stands disposed of in view of the consent cent terms.*
- 5) No order as to exist. “*

The writ petition was thereafter disposed of by the order dated 27 June 2016 in terms of the consent terms, which order reads thus:

“ Learned Counsel for the parties tender consent terms duly signed by the parties through their authorised representatives and also their respective Advocates. Learned Counsel for the Petitioners requests the Court to take the consent terms on record and seeks to withdraw the Petition. The consent terms are taken on record marked 'X' for identification. The statements and undertakings contained therein are accepted. The Petition is dismissed as withdrawn. No order as to costs.

2. In view of the dismissal of the Petition in view of the consent terms, the Civil Applications do not survive and the same are also disposed of.

3. This order is passed in the presence of authorised representatives of the parties.

We are informed that Civil Application No.2 of 2019 was filed for review of the aforesaid order, however, the same was rejected.

5. Based on these orders, the Petitioners have filed these petitions contending that the Respondent- Corporation, in spite of taking decision and in spite of agreeing before this Court in the consent terms, is not granting the relief to the Petitioners as sought for. The learned counsel for the Petitioners sought to contend that the Respondent- Corporation cannot go beyond the consent terms which have been agreed and, because of delay on the part of the Respondent- Corporation if the Petitioners are age barred and that is the ground of eligibility, the same cannot be accepted and the eligibility must be as on the date of the order of Industrial Court.

6. The learned counsel for the Respondent- Corporation submitted that the Respondent- Corporation has carried out an exercise of finding eligibility of large number of such persons including the Petitioners and it was found that extremely few of these persons were eligible as per the norms under the consent terms.

7. As regards the order passed by the Industrial Court and the order passed by this Court, there is no and cannot be any dispute. When the learned Single Judge disposed of the writ petition in terms of the consent terms, substituted the order passed by the Industrial Court with that of consent order.

8. Now, therefore, the question would remain of the execution of the said order. We note that the consent terms have not, in substance, modified the directions of the Industrial Court and have only provided the modalities for its implementation. Since large number of persons like the Petitioners are also involved, the adjudication regarding eligibility as on 25 January 2010 would require some time. According to us, since the rights of the Petitioners are traced to the order of the Industrial Court and the same has become final in view of order passed by this Court, the exercise will have to be carried out by the Industrial Court.

9. Accordingly, we permit the Petitioners to file an application for execution of the order dated 25 January 2010 passed

by the Industrial Court in Complaint (ULP) No.134/2007 read with the order dated 27 June 2016 passed by learned Single Judge of this Court in Writ Petition No.7060/2010. If such an application is filed by the Petitioners within a period of four weeks, the Industrial Court will examine the case of each of the Petitioners as regards their eligibility as on 25 January 2010 as as per the consent terms arrived at before this Court and once the Petitioners are found to be eligible as above, will issue necessary orders to the Respondent- Corporation for complying with the order. The said exercise to be carried out by the Industrial Court within a period of six months from the date of the application. The eligibility of the Petitioners will have to be accepted from the date of the order of the Industrial Court, that is, 25 January 2010.

10. We make it clear that the enquiry in this execution application will be limited to the above aspect that we have pointed out.

11. Writ petitions are accordingly disposed of.

12. So far as Civil Application No.2361/2018 is concerned, the civil application stands disposed of with liberty to the Applicant to circulate the substantive writ petition on a praecipe.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)