

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4644 OF 2023

Tushar Keshav Bichu

...Petitioner

Versus

Municipal Corporation of Greater Mumbai ...Respondent

....

Mr. Prakash Devdas, a/w. Ms. Vidula Sushil Patil, i/b. PV Legal Solutions.

Mr. Sagar Patil, for Respondent No.1-MCGM.

Mr. Swapnil S. More, Jr. Audit & Account Assistant & Mrs. Anjani Rahinj, Sr. Auditor & Account Asstt. For MCGM present.

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CORAM : SANDEEP V. MARNE, J.

DATED : 25 JANUARY 2024.

P.C. :

The challenge in the present petition is to the Part-I Award dated 13 August 2010 passed by the 5th Labour Court, Mumbai holding that the enquiry conducted against Petitioner is fair, legal and proper and findings of the Inquiry Officer are not perverse. The Order of the Labour Court unsuccessfully tested by the Petitioner before Industrial Court which has dismissed Revision by Order dated 28 September 2022.

2. The issue relates to invalidity of tribe claim of the Petitioner. It appears that the Petitioner was appointed in Municipal services on 27 December 1993 on a post reserved for ST Category. However, his Scheduled Tribe certificate has been subsequently invalidated by the Scrutiny Committee by Order dated 25 April 2008. Consequent upon invalidation of his tribe claim, disciplinary proceedings are initiated against him vide memorandum of charge sheet dated 26 January 2023. Enquiry was conducted in the charge levelled against him and the charge is held to be proved. Show Cause Notice was issued to Petitioner proposing to impose upon him penalty of dismissal from service. At this stage, the Petitioner approached the Labour Court by filing Complaint (ULP) No.133 of 2012, in which the impugned Part-I Award has been passed.

3. The principal grievance of Petitioner is about issuance of chargesheet and conduct of inquiry as per the provisions of Municipal Service Regulations and not in accordance with the Model Standing Orders applicable under the provisions of the Industrial Employment (Standing Orders) Act, 1946. Reliance is placed on judgment of this Court in ***Sitaram Tukaram Walunj vs Municipal Corporation of Greater Mumbai***, Writ Petition No 8711/2007 in which it is held that the penalty under Municipal Service Regulations cannot be imposed as Model Standing Orders are applicable to the Municipal Corporation of Greater Mumbai.

4. In my view however, it is not really necessary to delve into the issue correctness of inquiry conducted against Petitioner in view of subsequent events that have occurred during pendency of the proceedings before Labour and Industrial Court and also during pendency of the present

Petition. It appears that since interim orders were granted by the Labour Court and the Industrial Court, the Petitioner continues to be in service. The Apex Court delivered judgment in ***Food Corporation of India Vs. Jagdish Balaram Bahira*** (2017) 8 SCC 670 directing that invalidation of caste certificate would render the very appointment in service void ab initio and non-est. It is further held that cancellation of appointment is a necessary consequence and a corollary of invalidation of caste claim.

5. Towards implementation of the judgment in ***Food Corporation of India***, the State of Maharashtra decided to vacate the posts occupied by employees whose caste claims are invalidated so as to fill up the same through genuine SC/ST category candidates. For that purpose decision has been taken to adjust such employees whose caste claims are invalidated on supernumerary posts. The State Government accordingly issued Government Resolution dated 21 December 2019 deciding to place the services of such employees on supernumerary posts for a period of 11 months. It appears that the said decision of the State Government has been implemented by the Municipal Corporation and services of the Petitioner are being kept on supernumerary post on par with similarly placed other employees. In this regard, Petitioner has placed on record copies various Orders issued by the Municipal Corporation by which his services are continued on supernumerary post.

6. Ms. Patil, the learned counsel appearing for Petitioner, after taking instructions from Petitioner, who is personally present in the Court, makes statement that Petitioner is agreeable to the arrangement of keeping him on supernumerary post as done by the Municipal Corporation in case of

other similarly placed employees who are continued in service despite invalidation of their tribe claims.

7. On account of policy decision taken by the Municipal Corporation to continue services of employees whose tribe claims are invalidated, the question that arises is whether the Municipal Corporation would now want to pass an order dismissing Petitioner from service in pursuance of the show cause notice issued in the disciplinary proceedings. In my view, in view of policy decision taken by the Municipal Corporation to continue services of all its employees whose caste/tribe claims are invalidated, on supernumerary posts and in view of willingness expressed by Petitioner to remain on supernumerary post, no purpose would be served in deciding the issue involved in the Petition. Therefore, the disciplinary proceedings initiated against Petitioner vide memorandum of charge sheet dated 23 January 2009 would in fact be rendered infructuous in view of policy decision taken by the State Government and followed by the Municipal Corporation. In my view, similar treatment needs to be extended to the Petitioner, which is being given to other employees whose tribe claims are invalidated. It appears that without intervention by any Court, the Municipal Corporation has in fact already extended similar treatment to Petitioner by adjusting him against a supernumerary post. Depending on policy decisions taken by the State Government and the Municipal Corporation about continuation of services of employees with invalid caste/tribe certificates, the fate of Petitioner can be decided in view of willingness expressed by him before this Court.

8. In view of statement made by the Petitioner expressing willingness to accept same treatment as is extended to other similarly placed

employees whose caste claims are invalidated, in my view nothing further remains to be adjudicated in the present petition. The Writ Petition can accordingly be disposed of by observing that continuation of Petitioner in services of the Municipal Corporation on supernumerary posts would be on similar terms and at par with the other similarly placed employees and in that view of the matter, the Municipal Corporation need not proceed in the disciplinary proceedings initiated against Petitioner by charge sheet dated 23 January 2009. Municipal Corporation shall accord same treatment to the Petitioner as is extended to the other similarly placed employees whose tribe claims are invalidated.

9. With the above observations, Writ Petition is disposed of.

SANDEEP V. MARNE, J.

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