



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 5594 OF 2019

Smt. Kanchanmala w/o Subhash Tharewal,
aged about 71 years, Occ. Nil,
R/o Kawarapeth, Umred, Tah. Umred,
District – Nagpur.

...PETITIONER

Versus

- 1] Municipal Council, Umred,
through its Chief Officer, Umred,
District – Nagpur.
- 2] President, Municipal Council,
Umred, Tah. Umred, District – Nagpur.

...RESPONDENTS

Shri V.D. Raut, Counsel for the petitioner.
Ms B.P. Maldhure, Counsel for the respondents.

CORAM : ANIL L. PANSARE, J.
ARGUMENTS WERE HEARD ON : JULY 15, 2024
JUDGMENT IS PRONOUNCED ON : JULY 23, 2024

JUDGMENT :

Rule. Rule made returnable forthwith and heard the
learned Counsel for the parties finally at the stage of admission
itself.

- 2] The petitioner – complainant is aggrieved by award
dated 20/3/2019 passed by the Industrial Tribunal, Nagpur, in

Complaint (ULP) No. 180/2009, thereby rejecting her claim seeking pensionary benefits.

3] Having heard both sides and having gone through the record, what transpires is that the petitioner was appointed on daily wages on 11/8/1987 and rendered services with the respondents. Since the petitioner was not regularized, she filed Complaint (ULP) No. 1641/1991 before the Industrial Tribunal for absorption in the post of Peon alleging unfair labour practice under item nos. 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “Act of 1971”).

4] This complaint was partly allowed vide award dated 14/3/2000. The Industrial Tribunal held that the Municipal Council has indulged in unfair labour practice under item nos. 5 and 6 of Schedule IV of the Act of 1971. The Tribunal directed the Municipal Council to regularize the services of the petitioner with immediate effect without backwages. In doing so, the Tribunal has opined, in paragraph

15 of its award, that since the year 1991, the petitioner is working with the respondents under order of Court and, therefore, the said period cannot be treated as continuous service for the purpose of regularization. Thus, the order of regularization was passed without backwages coupled with the finding that the petitioner is not entitled for continuous service for the period from 1991 onwards.

5] The respondents filed Writ Petition No. 1952/2000 challenging the aforesaid award. Pending petition, it was pointed out by the respondents that the Regional Director Municipal Administration (RDMA) sought a proposal from the respondents for absorption of daily wagers, who were working prior to and on 10/3/1993. Accordingly, the proposal was submitted to RDMA through Collector, Nagpur.

6] The State Government, as a one-time measure, took a policy decision. Accordingly, on 30/7/2005, RDMA issued an order absorbing daily wagers, who were working prior to and on 10/3/1993 till the date of the order. The order pertained to

95 daily wagers, including the present petitioner, subject to 12 conditions. Condition no.10 in the said order was carried and stipulated as condition no.3 in letter dated 6/8/2005 issued by the respondents to the petitioner. This condition required the petitioner to withdraw pending cases. The High Court, however, relaxed this condition and the respondents were directed to consider the petitioner's case in accordance with law, if she accepts all other conditions.

7] Respondent no.1 accordingly issued order of appointment dated 11/12/2006. The petitioner accepted other conditions and joined duties on 13/12/2006. One of the conditions in the order, *viz.*, condition no.2, was that the earlier period of employment on daily wages will not be considered for monetary service benefits.

8] So far as Writ Petition No. 1952/2000 is concerned, the same was disposed of on the count that the petitioner has been absorbed as per the Government Policy and, therefore, the order impugned was rendered infructuous.

9] The petitioner then retired on superannuation on 30/6/2008. The amount of gratuity and pensionary benefits were, however, not extended to the petitioner and, therefore, she filed yet another complaint before the Industrial Tribunal. The complaint was opposed on the ground that she has not rendered pensionable service because her service period was 1 year and 6 months as against minimum service of 10 years in terms of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “Rules of 1982”). The Industrial Tribunal found merit in respondents’ contentions and further observed that the petitioner has accepted the proposal/order with open eyes and in turn, has accepted the condition that she will not be entitled to claim employment on daily wages for monetary service benefits. Accordingly rejected the complaint; which is under challenge.

10] The learned Counsel for the petitioner submits that the petitioner was appointed on daily wages on 11/8/1987 and rendered services till 30/6/2008. Thus, she completed about 21 years of service and, therefore, is entitled for pensionary

benefits. He further submits that once an employee renders continuous service of 5 years, he/she becomes entitled for payment of gratuity. He then submits that orders dated 30/7/2005 and 11/12/2006 may not be relevant while deciding retirement benefits. These orders only relate to her regularization and, therefore, the services that she rendered on daily wages ought to have been considered by the Tribunal.

11] As against, the learned Counsel for the respondents has supported the impugned award by contending that the petitioner has been not appointed by following due process of law and secondly, she having accepted the order of regular appointment along with the conditions therein, she cannot now claim benefit of services rendered by her on daily wages.

12] Having given thoughtful consideration to the submissions made by both sides, it is evident that vide award dated 14/3/2000, the Industrial Tribunal has directed the respondents to regularize the petitioner's services as Peon with immediate effect but without backwages. The award further

indicates that the petitioner was continued in service for the period from 1991 till the date of award under the interim order passed by the Tribunal and, therefore, the said period cannot be treated as continuous service for the purpose of regularization. The net result is, vide award dated 14/3/2000, the Industrial Tribunal directed the respondents to regularize the services of the petitioner as Peon with immediate effect. This award has been not set aside by the High Court.

13] It is worth mentioning here that the respondents in Writ Petition No. 1952/2000 had assailed the aforesaid award. The High Court vide order dated 7/11/2006 has observed that in similar matters, in relation with the same employer (present respondents), the Court had passed orders dispensing with condition no.3 of the communication dated 6/8/2005 for consideration of claim of employees for regularization/absorption in terms of the Government Policy. This Court accordingly directed the present petitioner (respondent therein) to submit compliance with all other conditions except condition no.3.

14] As noted above, condition no.3 in communication dated 6/8/2005 was that the employee, who had filed proceedings for regularization before various Courts including the Industrial Court, shall submit order of the said Court to the effect that the proceedings have been withdrawn.

15] Admittedly, in the present case, such order has been not placed on record, as it cannot be. It is so because the petitioner's complaint was already decided by the Industrial Tribunal and the respondents were directed to regularize the services of the petitioner as Peon with immediate effect. The said order was under challenge and, therefore, there arises no question of the petitioner withdrawing the proceedings before the Industrial Tribunal. In any case, this condition was relaxed by this Court.

16] Thereafter, on 3/9/2007, this Court was made to understand that the grievance of the petitioner has been resolved and, therefore, the petition has rendered infructuous. Accordingly, the petition was disposed of. Rule came to be

discharged. The petition has been not decided on merit and thus question of merger of judgment passed by the Court below will not arise. The order of the Industrial Tribunal was thus not set aside. Rather, the petition filed by the respondents herein was disposed of and rule was discharged. Resultantly, the order of the Tribunal dated 14/3/2000 attained finality. Consequently, the respondents were left with no other alternative but to regularize the services of the petitioner with effect from 14/3/2000. This has been not done.

17] The respondents have relied upon condition nos. 9 and 10 of order dated 30/7/2005 passed by RDMA, which stipulated that the employee shall withdraw the case filed by him/her for regularization before the Tribunal/Court and shall not claim benefit of service rendered by him/her on daily wages for financial or other benefits of service. Accordingly, the respondents issued communication dated 6/8/2005 calling upon the petitioner to submit document showing withdrawal of pending case, which condition was ultimately relaxed by this Court. Thereafter, letter of appointment dated 11/12/2006 was

issued by the respondents to the petitioner with a condition that she will not be entitled for any financial benefit on the basis of services rendered by her on daily wages. The Tribunal has held that this condition was accepted by the petitioner with open eyes and, therefore, will be not entitled to the said services for pensionary benefits.

18] In my view, once award dated 14/3/2000 passed by the Industrial Tribunal has attained finality, the respondents were under obligation to give effect to the said order. The petitioner has accepted the condition that she will not be entitled for any financial benefit on the basis of services rendered by her on daily wages. This acceptance will be inconsequential because, even the Tribunal in its award dated 14/3/2000 has held so. In other words, acceptance of this condition will not supersede the award passed by the Tribunal. The petitioner is, therefore, entitled for appointment as Peon with effect from 14/3/2000 without backwages as also without continuity of previous service. The Tribunal failed to consider this vital aspect. The impugned award, therefore, is not

sustainable.

19] The question that now requires answer is whether the petitioner will be entitled for pensionary benefits. The answer would be in the negative inasmuch as the petitioner shall stand appointed as Peon with effect from 14/3/2000. She stood retired on superannuation on 30/6/2008. The petitioner has, thus, rendered service of about 8 years. The petitioner, therefore, is not entitled for any pensionary benefits.

20] So far as payment of gratuity is concerned, the learned Counsel for the petitioner claims that she will be entitled for the same on completion of 5 years of service. Since the petitioner has rendered services of about 8 years, her claim for payment of gratuity ought to be considered in terms of the provisions of the Payment of Gratuity Act, 1972.

21] The petitioner is thus entitled for regularization in terms of the award of the Tribunal and, therefore, the issue of employment of the petitioner without following due process of law or that she has accepted the appointment with open eyes,

will be insignificant. The award dated 14/3/2000 passed by the Industrial Tribunal has attained finality and, therefore, all concerned including the respondents are bound by the said award and will have to act in terms of the said award. Consequently, the following order is passed :

ORDER

- I] The Writ Petition is partly allowed.
- II] The impugned award dated 20/3/2019 passed by the Industrial Tribunal, Nagpur, in Complaint (ULP) No. 180/2009 is quashed and set aside.
- III] The petitioner stands appointed as Peon with effect from 14/3/2000 without backwages and with a rider that she will be not entitled to seek relief of continuation of service.
- IV] The petitioner is entitled for the benefits of regular service with effect from 14/3/2000 till the date of her retirement, i.e., 30/6/2008.
- V] The respondents shall extend benefits, including payment of gratuity, as permissible under law, to the petitioner

within 12 weeks from today.

22] Rule is made absolute in the aforesaid terms.

JUDGE

Sumit