



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11663 OF 2024

The Dy Director Ground Water Survey & Anr
VERSUS
Jagannath Dhondiram Jawale

- Mr. B. A. Shinde, AGP for the Petitioner/State
- Mr. P. M. Shinde and Mr. P. B. Jadhav, Advocates for the Respondent

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 17, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the judgment and order dated 31.08.2023 passed in Complaint ULP No. 5/2014 by the Industrial Court, Aurangabad.

3. The facts which are necessary for the purpose of deciding the Petition can be narrated, in brief, as under:

It is the case of the Respondent/Complainant before the Industrial Court that he was appointed as Watchman in the year 1982 and continued to work with the Petitioner. In the year 1988, he was orally

terminated from service. This termination is challenged by filing Complaint ULP No. 1/1988 with prayer of reinstatement and continuity of service with back wages. Learned Labour Court by judgment and order dated 05.06.1991 allowed the complaint and directed his reinstatement in the services with full back wages with continuity of service. Revision filed against the said judgment being Revision Petition No. 27/1991 came to be rejected by the Industrial Court. Against this order of rejection of Revision, Writ Petition No. 3054/1995 was filed by the Petitioner. This Court by passing judgment dated 26.08.2011 has refused to cause interference in the order passed by the Labour Court of granting reinstatement with continuity of service. Back wages however was denied. There is no further challenge by either sides to this judgment of this Court before the Supreme Court and as such, it has attained finality.

4. Since the Petitioner was not granted permanency benefit though same were extended to juniors employed by the Petitioner, he filed Complaint (ULP) No. 5/2014 before the Industrial Court seeking permanent status and benefits of permanency. During the

pendency of the complaint, Respondent/Complainant got superannuated on 31.12.2020. Since the complainant has superannuated before decision of the complaint, Complaint came to be partly allowed with following reliefs:

O R D E R

- [1] The complaint is partly allowed with costs of Rs.5000/-.
- [2] It is hereby declared that, the respondents have engaged in unfair labour practice under Item Nos. 5, 6 and 9 of the Scheduled IV of the M.R.T.U. & P.U.L.P. Act, 1971.
- [3] The respondents are directed to cease and desist from such unfair labour practices forthwith.
- [4] The respondents are further directed to calculate and fix the wages of the complainant, as per the order of the Hon'ble High Court on the basis of applicable Notifications, Office Orders, etc. considering his continuity of service with effect from completion of 240 days on the date of his initial appointment and thereafter to pay to the complainant unpaid wages and difference in wages, along with interest @ 7% p.a. from the date of filing of the complaint till realization of the entire amount, and also to fix the pensionary benefits as per rules applicable to the permanent employees within a period of 3 months.

5. Learned AGP for Petitioners submit that the Industrial Court has committed error in granting benefits of permanency on the ground of entitlement of the complainant to get regularization after completion of 240 days of continuous service in view of provisions of clause 4-C of the Model Standing Orders. It is his submission that the Petitioner is Government Instrumentality and in view of judgment of Division Bench of this Court in case of Municipal Council and Another vs. Tulsidas Baliram Bindhade and Others, 2016 (5) AIR Bom R 145, the said provision has no application. It is his submission that merely on the ground of completion of 240 days of service and when admittedly complainant was not employed by adopting regular process, he is not entitled for permanency and benefits thereof.

6. Learned Counsel for Respondent/Original Complainant has drawn attention of the Court to the findings of fact recorded by the Industrial Court on the basis of evidence on record. It is his submission that before the Industrial Court the complainant has proved that junior daily wagers to him are made

permanent in the service whereas the proposal for the permanency of the complainant was deliberately not sent to the appropriate Government. He has also drawn attention of the Court to the Government Resolutions dated 01.04.2015 and 24.11.2000 in order to contend that the similarly placed daily wage workers were made permanent in the service. It is his submission that exclusion of the complainant from the said benefit in unwarranted discrimination caused against him which amounts to unfair labour practice.

7. No dispute can be made with regard to the proposition of law sought to be canvassed by the Petitioner that provision of clause 4-C of Model Standing Orders has no application to the Government and Government Instrumentality. However, the facts in the present case are totally different and are sufficient to indicate that Respondent/Original Complainant had worked continuously for a period of 38 years. There is evidence led before the Industrial Court to indicate that the juniors in the service to the complainant were made permanent and granted permanency benefits. There was absolutely no

justification provided by the Petitioners before Industrial Court for not including the name of the present Complainant in the proposal sent to the Government for regularization of the similarly placed workmen. The Government is not expected to be partial and shows bias against similarly placed employees. In welfare state like us, such discrimination could never be justified.

8. There is no dispute about the fact that the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 (for short '**the Act**') has application to the present case.

9. Schedule V of the Act defines unfair labour practices on part of employer when employer shows favouritism or partiality to one set of workers regardless of merit. Thus, it is not open for the employer to cause discrimination between two set of workmen and if it is done so, it amounts to unfair labour practice. There is evidence led before the Industrial Court to indicate that there was unjustified and unexplainable discrimination caused by the

Petitioners against Respondent/Complainant. Hence, no error can be said to have been committed by the Industrial Court to record findings of commission of act of unfair labour practice by Petitioners herein and further direction to cease and desist for the same with ultimate relief granted in favour of complainant.

10. The previous complaint of dismissal of service of the complainant in the year 1988 has resulted into judgment in his favour. By the said judgment of the Labour Court, he was granted continuity of service. The said order of continuity of service is upheld by this Court in Writ Petition No. 3054/1995. For want of any challenge to the said judgment, it is now admitted fact that since time of appointment of the Respondent/Complainant in the service, he continuously worked for a period of 38 years. Coupled with these facts, all junior employees to him are regularized. As such, the act of Petitioner of not regularizing him in the service is a unfair labour practice within the meaning of Section 28 read with Schedule IV, clause nos. 5, 6 and 9 of the Act. Considering the peculiarity of the facts of the case, the judgment in case of

Municipal Council and Anr (supra) has no application.

11. When the complainant was in a position to establish discrimination and unfair labour practices committed by Petitioner, order directing grant of retiral benefits to the Complainant by treating him permanent in the service cannot be faulted with. Moreover, it would be unjust to pass any order at this stage to call upon complainant who is aged about 62 years to knock the doors of the Government for pursuing his regularization. In fact it was the duty and the responsibility of the Petitioners to forward the name of the Respondent for regularization along with similarly placed employees. This having not done, the order passed by the Industrial Court becomes inevitable.

12. In view of above peculiar circumstances, this Court finds no reason or justification to cause interference in the order impugned. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)