

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3502 OF 2006

The Commissioner
Solapur Municipal Corporation
V/S

....Petitioner

Rajaram Shivaji Chavan & Ors.

....Respondents

Mr. Vishwanath Patil *for the Petitioners.*

Mr. Ashok B. Tajane *for Respondent Nos.1, 3, 4, 6, 7, 8A to 8D.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 13 FEBRUARY 2025.**

P.C.:

1. This Petition is filed by Solapur Municipal Corporation challenging judgment and order dated 14 February 2006 passed by the learned Member, Industrial Court, Solapur allowing Complaint (ULP) No.105 of 1996 and directing the Petitioner-Municipal Corporation to pay to the Respondents pay scales as well as promotions when they become eligible to be promoted.

2. Petitioner-Municipal Corporation has established its Transport Wing which apparently has separate employees. The Respondents were working on various posts in the Transport Wing such as Fuel Assistant, Ticket Assistant, Time Keeper, etc. A Circular was issued by the Petitioner-Municipal Corporation

on 22 September 1995 for filling of vacant posts of Junior Clerk from amongst daily wage Junior Clerks, Class-IV employees, etc. and accordingly, written test was proposed to be conducted for selecting them for appointment as regular Junior Clerks in the establishment of the Petitioner-Municipal Corporation (other than Transport Undertaking). Respondents who were working in the Transport Undertaking felt aggrieved by their exclusion from the selection process initiated vide Circular dated 22 September 1995 and felt that junior employees working on regular establishment of Petitioner-Municipal Corporation were likely to steal a march over them by getting appointed as Junior Clerks ignoring their claim. Respondents believed that though they were part of Transport Undertaking, the employees of Transport Undertaking and the employees on establishment of Municipal Corporation were freely transferable. Accordingly they instituted Complaint (ULP) No.105 of 1996 seeking a declaration that they be absorbed on the post of Junior Clerk and prayed for consequential benefits from retrospective dates. Petitioners also prayed for inclusion of their names in the seniority list of Junior Clerks and for their further promotions. The Industrial Court has proceeded to allow Complaint (ULP) No.105 of 1996 by issuing following directions:

I. Complaint is allowed.

II. It is hereby declared that the Respondent has engaged unfair labour practice under item 5,9 & 10 of Schedule IV of M.R.T.U. & P.U.L.P. Act.

III. The Respondent is directed to cease and desist from engaging such unfair labour practice henceforth.

IV. The Respondent is directed to pay the pay-scale payable to the Complainants. If the Complainants are eligible to be promoted to give promotion to such workers when they are eligible to be promoted.

V. Respondent is directed to implement the award, settlement or agreement from the date of passing of this order.

VI. No order as to costs.

VII. The Respondent is directed to implement this order within three months from the date of this order.”

3. The Petition came to be admitted by this Court on 25 August 2006. Later *ad-interim* relief was granted staying the impugned judgment and order on 8 June 2007. The said *ad-interim* relief was confirmed by this Court on 7 December 2007. Resultantly, the order passed by the Industrial Court is not been implemented during pendency of the present Petition.

4. I have heard Mr. Patil, the learned counsel appearing for the Petitioner-Municipal Corporation and Mr. Tajane, the learned counsel appearing for Respondent Nos.1,3,4,6, 7 and 8A to 8D-employees.

5. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the real cause of action for filing Complaint of unfair labour practice by the Respondents was issuance of Circular dated 22 September 1995 by establishment of the Petitioner-Municipal Corporation proposing to fill up vacant posts of Junior Clerks from amongst

daily wage Junior Clerks, class-IV employees of Municipal Corporation, etc. Accordingly list of 108 eligible employees was prepared who were to be subjected to written test for assessing their suitability for being appointed as regular Clerk. The Respondent did not pray in their Complaint that they should be given an opportunity to participate in the selection process initiated vide Circular dated 22 September 1995. They however sought a direct relief for their absorption as Junior Clerk in the services of the Petitioner-Municipal Corporation. The prayers made by the Respondents in their Complaint are as under:

"अ) सामनेवाला यांनी दि. २२.९.९५ रोजी काढलेले परिपत्रक व त्यानुसार चालविलेली कारवाई ही अनुचित कामगार, प्रथांचा अवलंब करणारी आहे, असे जाहिर करणेत यावे व सदरची अनुचित कामगार प्रथा ही मागे घेणेबद्दल सामनेवाला यांना आदेश देणेत यावा.

ब) फिर्यादीचे त्यांचे जेव्हा प्रथमतः २४० दिवस भरले, त्या तारखेपासून फिर्यादी हे कनिष्ठ श्रेणी लिपिक वर्ग-३ या पदावर संमिलित आहे, असे जाहिर करणेत यावे व तसा आदेश सामनेवाला यांना देणेत यावा. त्या-मुळे फिर्यादींचे वेतन कनिष्ठ श्रेणी लिपिक वर्ग-३ नुसार देणेचा आदेश सामनेवाला यांना देणेत यावा व त्यातील फरक पूर्वलक्षी प्रभावाने देणेचा आदेश सामनेवाला यांना देणेत यावा.

क) फिर्यादींना सामनेवाला यांचे सेवा जेष्ठता यादीत त्यांच्या नेमणुकीच्या तारखेपासून सामावून घेणेचा सामनेवाला यांना आदेश देणेत यावा, असे नांव सामनेवाल्याने फिर्यादींना यापूर्वी काही बढती मिळत असल्यास त्याचे फायदे व बढती देणेचा आदेश सामनेवाला यांना देणेत यावा.

ड) या फिर्यादीचा खर्च सामनेवाला कडून देववावा.

इ) इतर योग्य ते न्यायाचे हुकूम व्हावेत ही विनंती."

6. In my view the Complaints filed by the Respondents employees itself was clearly misplaced. If the Respondents felt that they had right to participate in the selection process initiated vide Circular dated 22 September 1995, they ought to have sought such relief in the Complaint. The Circular dated 22 September 1995 did not envisage direct absorption of any daily Class-IV employee as Junior Clerk. It contemplated convening of the selection process comprising of written test. It is not really known as to what happened to the selection convened vide Circular dated 22 September 1995. The Industrial Court has proceeded to pass an absolutely vague direction for payment of pay scale to the Complainant without clarifying the exact post of which such pay-scale is to be granted. The Industrial Court has further vaguely directed that if the Respondents are eligible to be promoted, they should be given such promotion from the date of their eligibility. In my view the directions issued by the Industrial Court are absolutely vague. So far as the construct of the judgment of the Industrial Court is concerned, beyond reproducing the evidence of various witnesses, the Industrial Court has failed to record even a single finding as to why it was allowing the Complaint. The operative portion in which the directions are issued by Industrial Court do not even refer to the Circular dated 22 September 1995. In my view therefore, what could have been granted at the highest by the Industrial Court was an opportunity to the Respondents to participate in the selection process for being considered for appointment as Junior Clerk in the establishment of the Petitioner-Municipal

Corporation. The Industrial Court could not have straightaway issued a direction for payment of pay scale of Junior Clerk (though it is not specifically granted in so many words in the operative portion of the impugned order).

7. Even otherwise the erroneous order passed by the Industrial Court on 14 February 2006 has been stayed during pendency of the present Petition. The selection process convened in terms of Circular dated 22 September 1995 must have been long since complete and the advertised vacancies must have been filled long ago. In my view therefore, there is no question of granting any relief to the Respondents in accordance with the said Circular dated 22 September 1995 at this distant point of time. Respondents apparently remained a part of Transport Undertaking and may have progressed in that stream on the available promotional posts. It is now too late in a day to consider switching over of the Respondents from Municipal Transport Undertaking to the establishment of the Municipal Corporation. On this ground also, the impugned order cannot be implemented at this distant point of time and the same deserves to be set aside.

8. The Petition accordingly succeeds and I proceed to pass the following order:

a) The judgment and order dated 14 February 2006 passed by the Industrial Court, Solapur is set aside and Complaint (ULP) No.105 of 1996 stands dismissed.

9. Writ Petition is **allowed** in above terms. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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