

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 18401 OF 2024

K.B. Bhabha Hospital MCGM,
Mumbai

...Petitioner

V/s.

Sachin Pandurang Jagtap

...Respondents

Mr. Prashant Kamble *with Mr. Anand Khairnar i/b Adv. Komal Punjabi for Petitioner.*

Ms. Rita Joshi, *through Video-Conferencing, for the Respondent.*

Ms. Namrata Pawar, *Administrative Officer, BMC, is present.*

CORAM : SANDEEP V. MARNE, J.

Dated : 6 March 2025.

P.C. :

1) The Petition challenges Award dated 12 September 2023 passed by Presiding Officer, Fourth Labour Court, Mumbai, answering Reference IDA No.83 of 2019 partly in the affirmative and directing reinstatement of the Respondent with continuity without back wages.

2) We have heard Mr. Kamble, the learned counsel appearing for the Petitioner and Ms. Joshi, the learned counsel appearing for the Respondent.

3) It appears that the Respondent was appointed in service of the Municipal Corporation on the post of Ward Boy on compassionate basis vide order dated 11 January 2008. According Mr. Kamble, the initial appointment was temporary subject to satisfactory completion of probation of three years. However, perusal of the appointment order dated 11 January 2008 would indicate that there was no stipulation for probation therein. On the contrary, the appointment order stated that the Respondent was appointed on vacant post in permanent service w.e.f. 11 January 2008.

4) Mr. Kamble would attempt to show similar order passed in case of another employee Shri. Wasim Munvar Shah, where he was also appointed on compassionate grounds alongwith the Respondent on 4 January 2008 and that the said office order dated 4 January 2008 did not contain any stipulation for probation. He would invite my attention to the office order dated 26 October 2020 by which Shri. Wasim Munvar Shah was later confirmed in service retrospectively from 2 March 2011 after completion of three years of service. However, the said orders relating to Shri. Wasim Munvar Shah were admittedly not produced before the Labour Court and the same cannot be produced directly before this Court. Secondly, an order issued 12

years after date of initial appointment in case of a different employee cannot be used to draw an inference that Respondent was put on probation for three years.

5) The initial appointment order issued to the Respondent on 11 January 2008 clearly used the words "permanent service", in addition to absence of any stipulation for probation. In my view therefore no serious flaw can be noticed in the view taken by the Labour Court that the Respondent was not appointed in the temporary service nor was expected to complete the period of probation for attaining the status of confirmed employee.

6) The Respondent was terminated from services as he had absented himself from 18 January 2011 to 7 June 2011. However, admittedly no departmental inquiry was conducted before termination of his services. His services are terminated on a mere show cause notice. The termination letter does not refer to the status of Respondent as temporary employee or his failure to satisfactorily complete the period of probation. The letter dated 31 August 2012 was not a mere discharge from service for failure to complete the period of probation. It is a stigmatic termination after recording reason of absence from duties.

7) So far as the delay in raising the Reference is concerned, the Labour Court has already denied back wages to the Respondent. The order merely directs reinstatement with

continuity and without back wages. Therefore no interference is warranted in the impugned Award of the Labour Court.

8) The Petition is accordingly dismissed.

[SANDEEP V. MARNE, J.]