

(2011) 03 BOM CK 0181

In the Bombay High Court

Case No : Writ Petition No. 2070 of 1996 (Bombay W.P. No. 1908 of 1992)

Dilip Shankar Deo

APPELLANT

Vs

Chief Officer, Dhule Nagarpalika, Dhule

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 7 ALLMR 726 : (2012) 2 BomCR 473 : (2011) 131 FLR 841 : (2011) 5 MhLj 239

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : K.C. Sant, for the Appellant; S.P. Shah holding for Pravin Shah, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde J.

1. this Writ Petition is directed by the Judgment and order dated 5-2-1992 passed by the member, industrial court, nashik in complaint (ULP) No.360/1989.

2. It is the case of the petitioner that, he Was in employment of the respondent from May 1983 as a Bigari on daily wages. The petitioner was appointed as bigari, but he was asked to work as a peon for sometime and thereafter, he was asked to work as a clerk and he continued to work as a clerk. He was working as octroi clerk in the octroi department of the respondent. The respondent is the Municipal Council, Dhule. It is the case of the petitioner that he is commerce graduate from Pune University. He has passed his B. Com in June 1987 in second class. The petitioner joined on daily wages and worked as Bigari in the beginning and thereafter as, peon and at the time of termination of services he was working as a clerk in the Building Department. The petitioner also worked as a clerk in the Octroi Department. The petitioner was in continuous employment and had completed more than 240 days after 1985. A table showing the number

of days for which the petitioner had worked from 1983 onwards in every month is shown in the table at Exhibit A. It is further case of the petitioner that though the Industrial Court has accepted the claim of the petitioner for permanency, but not for the post of clerk, but on the post of peon. According to the learned counsel for the petitioner, the petitioner claimed permanency on the post of clerk, as he has worked as clerk, but his services were terminated. Therefore, according to the counsel for the petitioner, since the petitioner is fully qualified graduate, his services should have been made permanent on the post of clerk. However, Industrial Court without any basis held that the petitioner is entitled for permanence on the post of peon. According to the learned counsel for the petitioner, it was not the case of the petitioner or he did not claimed the permanency for the post of peon. There is no basis in the judgment and order impugned in this petition for holding that the petitioner is entitled for permanency to the post of peon. According to the learned counsel for the petitioner, when Exhibit A to the petition i.e. the chart prepared by the Municipal Council, Dhule itself shows that the petitioner herein Mr. Dilip Shankar Deo was working as clerk, therefore, the counsel for the petitioner submitted that, since that material was brought on record showing that the petitioner throughout has worked as clerk, there was no reason for the Industrial Court to held that the petitioner is entitled for benefits of permanency to the post of peon.

3. On the other hand, the learned counsel for the respondent submits that, in absence of any pleadings or sufficient material brought on record for claiming the permanency for the post of clerk, the Industrial Court was not left with any option but to held that the petitioner has failed to bring on record or has not pleaded in the complaint that he is claiming benefit of permanency to a particular post. Therefore, the counsel for the respondent would submit that, being a writ petition under Article 227, this Court may not interfere in the impugned judgment and order.

4. Upon hearing the learned counsel for the petitioner and learned counsel for the respondent and upon perusal of reasons recorded by the Industrial Court and in particular in para 6 i.e., "the complainant has contended that he worked as a Peon and thereafter as clerk but while claiming benefits of permanency he did not aver as to in what post he claims benefits of permanency. From the evidence adduced it is not clear whether the complainant is qualified for the post of clerk."

5. In my opinion, the Industrial Court, after appreciation of the documents brought on record and the averments in the complaint and relevant facts held that there was no averment as to on what post the petitioner claims benefit of permanency. In absence of specific averments and sufficient evidence to the effect that, the petitioner is fully qualified for the post of clerk and he has worked continuously on said post, the Industrial Court was justified in taking view that, the petitioner is not entitled to the benefits of permanency for the post of clerk. Therefore, no interference is warranted in the impugned judgment and order. It is true that, the Industrial Court merely because there is no qualification

stipulated about post of peon at the relevant time, held that the petitioner is entitled for the benefit of permanency on the post of peon. However, in my opinion that cannot be ground to interfere in the impugned judgment and order. In the result the impugned judgment and order is confirmed. The petition is dismissed. The rule stands discharged. Interim relief stands vacated.

6. It is needless to mention that since, the sufficient material was not brought on record before the Industrial Court by way of specific averment by the petitioner in respect of his claim for permanency on the post of clerk, the Industrial Court has not given benefit of permanency to the petitioner on the post of clerk. Therefore, it is open to the petitioner to approach the Industrial Court. At this stage, the counsel for the respondent submits that, granting such liberty would amount to remand of the case to the Industrial Court. However, it is left open to the Industrial Court to decide the application if any filed by the petitioner in accordance with law.