

(2007) 05 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No's. 2255, 2257, 2259 to 2263 of 2005

Municipal Council

APPELLANT

Vs

Manu Sudesh Malik and Another

RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2007) 6 ALLMR 267 : (2008) 3 BomCR 832

Hon'ble Judges : Chaudhari A.B., J

Bench : Single Bench

Advocate : Abhay Sambre, for the Appellant; S.S. Ghate, for Respondent No. 1, N.S. Jog, S.Y. Deopujari and Dangre, A.G.Ps., for the Respondent

Final Decision : Dismissed

Judgement

Chaudhari A.B., J.—Rule returnable forthwith. Heard finally by consent of parties.

In these writ petitions, an interlocutory order dated 28-2-2005 passed below Ex. 13 in Complaint (ULPA) Nos. 534/03, 537/03, 529/03, 533/03, 535/03, 536/03 and 539 of 2003 is impugned by which the Industrial Court, Nagpur, rejected the application for dismissal of the complaint filed by respondent No. 1. These petitions being against interlocutory order deciding no rights of the parties, looking to the nature of the impugned orders, are treated as under Article 227 of the Constitution of India.

2. Facts:

The respondent No. 1 belonging to sweeper community filed a complaint before the Industrial Court u/s 28 read with Items 6 and 9 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU and PULP Act). In the complaint, it is pleaded that in accordance with the policy adopted by the State Government to

appoint relatives/close relatives/nominees of a sweeper working with a Municipal Council on "Vashila Paddati" (Recommendatory system), the respondent No. 1 came to be appointed as Safai Kamgar from 3-10-2003 in the pay scale of Rs. 2,550-55-60-3200.

3. The State Government had appointed LAD Committee to look into the demands of the sweeper community which was engaged in letting the night soil on their head when the drainage system to flush out the night soil was not available in large number of Municipal Council areas in the State of Maharashtra. LAD Committee had made several recommendations and one of them was to appoint relative/close relative/nominee of a sweeper employed in the Municipal Council directly in the vacant post in the prescribed pay scale. The said recommendation and some others were accepted by the Government of Maharashtra and accordingly by the Government Resolution the Municipal Councils were directed to make appointments as per "Vashila Paddati" system.

4. The respondent No. 1 therefore averred in the complaint that his/her appointment was made by the petitioner in accordance with the said policy of the State Government and, as such, his/her appointment cannot be termed as temporary or otherwise when the appointment itself is a regular appointment. The said policy of the State Government is an exception to the normal recruitments in Municipal Councils. The respondent No. 1 therefore stated in the complaint that his/her appointment was against a clear and permanent vacant post in the prescribed pay scale. He then contended that his/her appointment was still made in accordance with the procedure required to be followed under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, i.e. upon the recommendations made by the Standing Committee of the Municipal Council. The averments in relation to the appointment of respondent No. 1 thus were made in details in para 1 of the complaint. The respondent No. 1 prayed in the complaint for absorption in service on permanent basis.

5. The petitioner appeared before the Industrial Court and filed its written statement with a preliminary objection. The preliminary objection was that after filing of the complaint on 21-10-2003 the petitioner terminated the services of respondent No. 1 by the order dated 10-11-2003 and, therefore, the complaint should be dismissed without going into the merits thereof. In the written statement that was filed, the detailed averments in the complaint about the appointment under the policy of the Government accepting Lad Committee's report qua the recruitments of sweeper were not at all denied nor any passing reference even was made denying the said averments.

6. It was, however, stated that the appointment of respondent No. 1 that was made was without any power and authority by the Chief Officer. It was stated that since the establishment expenditure of Municipal Council was beyond the prescribed limit, the appointment was not correctly made. The complaint before the Industrial Court proceeded and on 3-1-2004 the petitioner filed application (Ex. 13) for dismissal of complaint on the ground that the complaint was

infructuous because the services of respondent No, 1 were terminated, though later in point of time after filing of the complaint. This application (Ex. 13), in short, was in the nature of prayer for deciding the preliminary objection that was taken in the written statement. In other words, the petitioner wanted that the Industrial Court should decide preliminary objection instead of deciding the case on merit. The application (Ex. 13) was replied to by respondent No. 1 stating therein that an amendment application was already moved in the complaint and the application was liable to be rejected. The Industrial Court then made the impugned order rejecting the application (Ex. 13) stating therein that since the preliminary objection raised by the petitioner was a matter of inquiry/evidence, the preliminary issue would definitely be decided along with other issues.

7. The learned Counsel for the petitioner brought to my notice that after filing of the present writ petition, this Court granted stay of the proceedings in the Industrial Court on 5-5-2005 and thereafter on the basis of statements made during the hearing of the present petitions, the representations made by the Municipal Councils to the State Government in the matter were required to be decided by State and this Court also expected that the same would be decided by the State Government vide order 4-8-2006. Thus after issuance of the said order by this Court, the proceedings continued to be adjourned for one or the other reason. On 30-3-2007 when the petitions were called out for hearing, again it was stated by the Counsel for the parties that representations were pending with the Government. On earlier occasion on 7-3-2007 the Counsel for respondent No. 1 made an allegation that the Government was deliberately delaying the consideration. When a query was made from the A.G.P. about the same, the answer was that they did not receive any instructions and the learned A.G.P. submitted that as a matter of fact, the main issue being still not decided on merits by the Industrial Court, the entire exercise which was undertaken since 5-5-2005 should come to an end. Since the matter is pending in this Court from 3-5-2005, i.e. for about two years, I do not think it fit to adjourn the matter over and again as even the Industrial Court can take care of the allegations and counter allegations made by the parties, since the complaints are awaiting adjudication on merits. The parties also agreed for final disposal of the writ petitions.

8. Arguments:

The learned Counsel for the petitioner submitted that the services of respondent No. 1 having been terminated by the petitioner, though after institution of complaint by respondent No. 1, the complaint became infructuous and that is why in the written statement preliminary objection to that effect was taken and by application (Ex. 13), prayer was made to decide the said preliminary objection first instead of deciding the matter on merits. The learned Counsel for the petitioner then argued that the petitioner had filed order of termination on record before the Industrial Court under a list of documents and it was therefore evident that the complaint for permanency in service could not be tried on merits. The

learned Counsel then submitted that the entire exercise of trying the complaint on merits would be futile as the complaint itself is not maintainable. He then argued that the termination that was made by the petitioner has also not been challenged before the appropriate Court and that is the reason why the complaint was liable to be dismissed on the said preliminary objection. He finally argued that the application/preliminary objection that was raised was liable to be allowed and the complaint was liable to be dismissed.

9. Per contra, Mr. Ghate, learned Counsel for respondent No. 1, submitted that the application for amendment was already moved before the Industrial Court and that the said submission was made by him while giving say on the application (Ex. 13). He argued that merely because termination was effected by the petitioner after filing of the complaint, the complaint does not become infructuous. He submitted that at any rate the appointment of respondent No. 1 falls in exceptional category and is not like the normal recruitment. He argued that the appointment of respondent No. 1 was made in accordance with the policy of the Government to appoint relative/close relative/nominee of a sweeper and, therefore, there was no question of terminating the services of respondent No. 1 who was appointed in a vacant post and in a particular pay scale. He then pointed out that the averments to that effect in paragraph 1 of the complaint were almost accepted by the petitioner, as can be seen from the reply to paragraph 1 of the complaint. Finally, he prayed for dismissal of writ petitions with costs.

10. The learned Assistant Government Pleaders appearing on behalf of respondent No. 2 in these petitions argued that it was wholly unnecessary to consider the issue about the alleged representations made by the Municipal Council to the State Government about approval to the appointments of Safai Kamgar with the Municipal Council, Pulgaon. According to them, when the complaint is pending before the Industrial Court, the said Court can also take care of the said aspect of the matter. Lastly, they prayed for dismissal of the writ petitions with costs.

11. Considerations:

At the outset, it is clear from the record that the complaint before the Industrial Court was filed on 21-10-2003 and, according to the petitioner, the termination of services of respondent No. 1 was made on 10-11-2003. The petitioner appears to have hastily terminated the services of respondent No. 1 and as is clear from reading of the orders of this Court dated 1-11-2006 and 9-11-2006, the petitioner has also sent representations to the Government about employment of respondent No. 1. The cause of action for filing the complaint, in my opinion, does not come to an end merely because the petitioner/employer played trickery and terminated the services of respondent No. 1 after filing of complaint for permanency.

12. The Industrial Court is required to declare unfair labour practice on the date

of filing of complaint and, therefore, the contention advanced by the learned Counsel for the petitioner is misconceived and misplaced in law. Despite termination of services admittedly after filing of the complaint, the complaint still has to be decided on merits. It would be a mockery of justice if in such a background complaints are dismissed as the employer would terminate the services of employee after a complaint for permanency is filed and then raise a preliminary objection to the maintainability of complaint for permanency before Industrial Court.

13. Insofar as termination of respondent No. 1 is concerned, it appears that respondent No. 1 has filed amendment application in his complaint and, at any rate, the termination of service can always be challenged by respondent No. 1 before the Labour Court, or if permissible before the Industrial Court. That by itself cannot be a ground to throw out the complaint without deciding the same on merits. The petitioner has unnecessarily prolonged litigation by filing such application/preliminary objection. Looking to the nature of the appointment which is based on the policy of the Government, it was not expected of the petitioner which is a public body to adopt such dilly dallying tactics and prolong the proceedings before the Industrial Court. It is seen from the record that these petitions have been pending for almost two years in this Court with a stay of the proceedings in the lower Court. I do not find any justification for a public body like Municipal Council to indulge in multiplying the litigation and then approaching this Court and getting the proceedings stayed before the Industrial Court for over two years. The following observations of Apex Court in the Case of (D.P. Maheshwari Vs. Delhi Administration and Others, aptly apply in the instant case.

It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court

under Article 136 may be allowed to the exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in the fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues.

14. Following the aforesaid observations of the Apex Court, the only alternative for me is to dismiss all these writ petitions with costs. In my opinion, the Municipal Council, which is a public body, should not have indulged in protracting the proceedings before the Industrial Court. The respondent No. 1 who is a sweeper has lost valuable two years before the Industrial Court because of the stay of the proceedings granted by this Court at the instance of the petitioner. Respondent No. 1 is required to be compensated in such a situation. In my opinion, therefore the costs of Rs. 3,000/- to be paid by the petitioner to respondent No. 1 in each petition would meet the ends of justice, since I have held that it was wholly unnecessary for the petitioner to litigate at the interlocutory stage by approaching this Court.

15. In the result, all the writ petitions are dismissed with costs quantified at Rs. 3,000/- per Writ Petition to be paid by the petitioner to respondent No. 1 - complainant in each petition within four weeks from the date of receipt of writ of this order. Costs shall not be paid from the Municipal Fund of the Council but shall be recovered from the Chief Officer, who filed these writ petitions. Respondent No. 2 is directed to oversee the compliance of this order. The Industrial Court is directed to decide the complaints including amendment applications, if any, challenging terminations within a period of nine months from the date of receipt of writ of this Court. It is made clear that the Industrial Court shall not be influenced by any of the observations on merits of the cases as they are ad hoc in nature for deciding the present writ petitions only.