
(2006) 08 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 417 of 1996

Rama Anandrao Khobragade

APPELLANT

Vs

Maharashtra Water Supply and Sewerage Board and Others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Citation : (2006) 6 ALLMR 550 : (2007) 3 BomCR 984

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : Manoj Rajan, for the Appellant; Kakani, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—By this Writ Petition, the petitioner-employee has challenged the order dated 14.7.1995 passed by the Industrial Court, Amravati directing the employer (present respondent Nos. 1 to 3) to give promotion to the present respondent Nos. 4 to 7 (complainant before Labour Court) as. Fitter with retrospective effect from 22.7.1993 with all incidental monetary benefits. This Court has, while admitting the matter, issued Rule on stay but it appears that no interim orders are passed thereafter. The learned Counsel for the petitioner states that he is not aware about the present position and status of the petitioner. Advocate Kakani, who appears for employer states that the petitioner is already reverted and is working on the lower post.

2. Respondent Nos. 4 to 7 here filed complaint ULP No. 509/1993 under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act and claiming the relief of direction to their employer to cease and desist from engaging in unfair labour practice forthwith and to consider their claims for promotion to the next higher post with retrospective effect. They contended that on 22.7.1993, the present petitioner was promoted as Fitter though he did not possess requisite qualification as per rules. They further stated that the said promotion is illegal and unlawful.

According to them this constituted unfair labour practice under Item 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act. The present petitioner was respondent No. 4 in that complaint. The employer as also the present petitioner have filed their written statement. It was pointed out to the Industrial Court that the petitioner was already working on the post of Fitter and, therefore, he was given that post by promotion order dated 22.7.1993. The Industrial Court, after appreciating the evidence produced before it, found that the present respondent Nos. 4 to 7 were senior to the petitioner and, therefore, their claims ought to have been considered first for promotion. It found that the employer failed to place on record any material justifying its action of promoting junior employees i.e. present petitioner or of denying promotion to senior employees like respondent Nos. 4 to 7. It, therefore, issued the direction as mentioned above.

3. I have heard Mr. Manoj Rajan, Advocate for the petitioner and Mr. Kakani, Advocate for respondent Nos. 1 and 3. Nobody appears for respondent Nos. 4 to 7 though they are served.

4. Mr. Rajan, Advocate has argued that the learned Member, Industrial Court could have first seen that there was no challenge to order of promotion dated 22.7.1993 before it. He contends that there is no prayer for quashing and setting aside the said order and as such the Industrial Court has acted without jurisdiction in quashing and setting aside the said promotion. He further states that the Industrial Court also lost sight of the fact that the petitioner is already working as Fitter and decision in this respect is communicated by letter dated 15.3.1993 issued by the Executive Officer of respondents to its Superintending Engineer clearly authorized the Superintending Engineer to grant benefit to the employees of lower posts, who were discharging higher responsibility looking to the requirement of the work. He contends that in view of this letter, the petitioner was given the post of Fitter on 22.7.1993. He further states that it was done after considering the recommendations of the Selection Committee and judging the experience of the petitioner. According to him, as the Industrial Court has overlooked this aspect of the matter, the order of Industrial Court cannot be sustained. He further points out that after the impugned order of the Industrial Court dated 16.12.1995, respondent Nos. 1 to 3 have issued an order of reversion and they reverted the petitioner from the post of Fitter to Mazdoor. According to him, there was totally no application of mind by the Industrial Court. Hence, the impugned order is liable to be quashed and set aside.

5. Advocate Kakani for respondent Nos. 1 and 3 states that petitioner was working as Mazdoor and he has been promoted from that post to the post of Fitter. He further argues that the Industrial Court has considered the complaint as filed by respondent Nos. 4 to 7 before it and after reading that complaint, it has found that there was challenge to the order dated 22.7.1993. He states that order dated 22.7.1993 is, therefore, touched by Industrial Court and the complainants before the Industrial Court have been directed to be given benefit

from 22.7.1993. He states that the Industrial Court has not ordered reversion of the petitioner but the Industrial Court has found that if sufficient number of posts are not available to accommodate the complainants before it, the promotion should be effected turn by turn. According to him, in the process as respondent Nos. 4 to 7 happen to be senior to the petitioner, they are required to be promoted first and accordingly they have been promoted. He states that to accommodate them, the petitioner was required to be reverted and that order has been issued on 16.12.1996. According to him, there is nothing wrong in the order of Industrial Court and the order, therefore, needs to be maintained.

6. The perusal of complaint, as filed, reveals that cause of action to file the complaint has been mentioned by respondent Nos. 4 to 7 as the promotion dated 22.07.1993 given by respondent Nos. 1 to 3 the petitioner. They have stated that the present petitioner does not possess requisite qualification for the promotional post as per rules. It is further stated that respondent Nos. 4 to 7 were senior and eligible for the promotion and there was nothing with the employer to deny them the promotion. They have, therefore, complained of favouring the petitioner, without any merit. The prayer is to enquire into the unfair labour practice, to grant declaration that there is unfair labour practice falling under item 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act. The Court below was requested to direct the employer to cease and desist from unfair labour practice forthwith and consider the claim of respondent Nos. 4 to 7 for the said promotion with retrospective effect. The prayer, therefore, is to consider the claim for promotion from 22.7.1993. It is, therefore, clear from bare reading of the complaint that the very promotion order dated 22.7.1993 constituted a cause of action for its institution. The Industrial Court has, therefore, correctly appreciated the controversy and its order is not without jurisdiction.

7. The contention of petitioner that he was already a Fitter and he has not been promoted by order dated 22.7.1993 now needs to be considered. The learned Counsel for the petitioner has invited attention to statement contained in written statement filed by respondents before the Labour Court as reproduced by Industrial Court in its judgment. From that statement, it appears that present respondent Nos. 1 to 3 admitted that the petitioner was already working on the higher post and he was given promotion as per direction of the Department. They, therefore, denied that there was any unfair labour practice or favouritism. The perusal of impugned order reveals that the learned Member, Industrial Court has not considered this fact. The Member, Industrial Court has not recorded any finding; whether the petitioner was already working as Fitter and, therefore, after following a particular policy in this respect, the petitioner was promoted as Fitter. Perusal of communication dated 15.3.1993, which has been placed on record by petitioner along with the petition, shows that it is a letter written by Executive Officer to the Superintending Engineer and he states that he was directed to write that the Superintending Engineer is competent to grant benefits to employees working in lower cadre, who are discharging their responsibilities

on higher post looking to the requirement of work. It is, therefore, apparent that the Executive Officer has written the said letter as directed. Who directed him and on what basis he has written that letter is not clear. What is the legal sanction for the said communication or decision is not apparent. The services with respondent Nos. 1 to 3 is a public employment and hence on the basis of said communication no right can be worked out in favour of the petitioner. Perusal of impugned order dated 22.7.1993 clearly shows that the petitioner was earlier working as Mazdoor and he has been promoted as Fitter as per recommendations of Selection Committee judging the experience and seniority. The order further mentions that the promotion is temporary. In this background, I find that the petitioner did not have any right to the post of Fitter. If the petitioner wants to demonstrate that because he was already working as Fitter and, therefore, any right was available to him to claim that post, he was given that opportunity before the Industrial Court and the said opportunity has been utilized by him. The Industrial Court has, after considering the entire material produced before it, found that respondent Nos. 4 to 7 were senior and injustice has been caused to them.

8. In these circumstances, I find no perversity or jurisdictional error in the approach of the Industrial Court. No case is made out for interference in the matter in writ jurisdiction. The writ petition is therefore, dismissed. Rule is discharged. No orders as to costs.