

(2010) 11 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 796 of 1990

Sharad Barjibhe

APPELLANT

Vs

Forest Development Corporation of Maharashtra Ltd., Nasik
Division, Divisional Manager Forest Development Corporation
and The Industrial Court

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 30(2)

Citation : (2011) 2 ALLMR 662 : (2011) 128 FLR 574 : (2011) 2 MhLj 582

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

Bench : Single Bench

**Advocate : R.P. Dhase, for the Appellant; Parag Shahare, h/f Pradeep Sahare,
for the Respondent**

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Writ Petition takes exception to the Judgment and order dated 19th October, 1989 passed by the Industrial Court, at Nashik in complaint (ULP) No. 67 of 1988, to the extent it refuses prayer of the Petitioner conferring on him status of Clerk in the employment of the Respondents.

Brief facts of the case are as under:

2. It is the case of the Petitioner herein who is original complainant (Here-in-after referred as "complainant") that he was employed temporarily on daily wages with the Respondent with effect from 1st of April, 1982. According to complainant, he is continuously in service with the Respondent as a workman, as daily wages with effect from 1st of April, 1982. There was no break in his service. Complainant worked with the Respondents for more than 240 days in each of the years, and he has paid daily wages at the rate of Rs. 9.50 paise per day.

According to the complainant, he is continued by the Respondents as a temporary on daily wages from year to year basis, in order to deprive him of the benefits available to a permanent workman. It is the case of the complainant that the Respondent recruited one Shri Badgujar with effect from 31st December 1987 and Shri A.B. Kulkarni from 29th April, 1987 in the regular establishment of clerk. Although their candidature was not recommended by the local Employment Exchange.

The Respondents then requisitioned a list from local employment exchange for taking interviews for appointment in the regular establishment of clerks. Those interviews were scheduled on 28th March, 1988, and the complainant wanted that the Respondents shall be prevented from recruiting the above candidates unless the complainant is considered for his absorption in the regular cadre of clerk.

It is the case of the complainant that he is qualified for the post of Clerk. He therefore, filed complaint seeking necessary directions to the Respondent to absorb him in the regular establishment of clerk. The complainant also filed application Exhibit U-2 u/s 30(2) of the Act seeking immediate interim relief. Considering the application and hearing the Advocate appearing for the complainant, the Respondent was directed to continue the complainant in his present job at the same station till the disposal of the application Exhibit U-2. The parties then proposed that the order dated 28th March, 1988 may be continued till the disposal of the main complaint.

3. The Respondents had filed written statement at Exhibit C-4 on 17th June, 1988 contending there in that the complainant being employed as a temporary on daily wages, is not entitled for his absorption in the present cadre of Clerk. The complainant is not qualified for appointment as a Clerk in the regular cadre.

4. After recording the evidence, and hearing the respective parties, Industrial Court, Nashik passed the following order:

It is hereby declared that the Respondents are indulging in an unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. And P.U.L.P. Act, 1971 in continuing the complainant as a temporary on daily wages for years.

The Respondent is hereby directed to stop and desist from the unfair labour practice with immediate effect and to pay the complainant wages and provides him all other facilities which are available to his counter-parts employed in permanent establishment, from the date of complaint i.e. 28th March, 1989.

The arrears of wages shall be drawn and paid to the complainant within a period of two months of this order.

No order as to costs.

5. Aggrieved by the judgment dated 19th October, 1989 in complaint (ULP) No. 67 of 1988, thereby refusing the relief of status of clerk to the Petitioner in the establishment of the Respondent herein, this Writ Petition is filed by the

Petitioner.

6. The learned Counsel appearing for the Petitioner invited my attention to the pleading in the petition, grounds taken therein, annexures thereto and all other relevant documents and submitted that since the Petitioner was working with the Respondent No. 2 i.e. Divisional Manager, Forest Development Corporation, Yawal with effect from 1st April, 1982 as a clerk, he is entitled to be absorbed as a Clerk in the establishment of the Respondent No. 2. It is further submitted that when the complainant was filed, the Petitioner has served as clerk on daily wages, without even a break of a single day, and through out his service career the Petitioner has rendered bootless service. It is further submitted that the Petitioner has discharged duties of clerical work, accounting, inward-outward, preparing bonus account, maintaining account of World Food Programme, maintaining cash-book and maintaining other registers as directed by the officers. The learned Counsel further submitted that this fact is supported by an extract of muster filed by the Respondents before the Industrial Court, Nashik, which shows that under 30 items shown in the extract the Petitioner served for 319 days from March, 1987 to February, 1988 and he has served for 345 days for the period March, 1986 to February, 1987. The learned Counsel further submitted that the service record of the Petitioner maintained by the Respondent was sufficient to confer the status of Clerk on the Petitioner. The learned Counsel further submitted that though the Petitioner was qualified, the Industrial Court has not considered the said fact and also evidence brought on record and record maintained by the Respondents about the services rendered by the Petitioner as a clerk in the establishment of Respondent No. 2. Therefore, this petition may kindly be allowed.

7. On the other hand, learned Counsel appearing for the Respondents submitted that since the Respondent was not qualified, therefore, Industrial Court, Nashik has rightly rejected the claim of the Petitioner that he should be absorbed as a Clerk on permanent basis in the establishment of the Respondent No. 2 herein.

8. I have given due consideration to the rival submissions and I am of the opinion that since present Petitioner was not fulfilling the prescribed qualification for the post of Clerk, the Industrial Court, Nashik, has rightly decline the relief to the Petitioner i.e. he should be absorbed as a Clerk on permanent basis in the establishment of Respondent No. 2. The Industrial Court, Nashik, has recorded the findings of facts in para No. 6 and held that the Petitioner was not entitled for the appointment on the post of Clerk because he has not passed the typing examination from the recognised institution with a speed of 30 W.P.M.

It is not in dispute that such qualification was prescribed for the post of Clerk. Though the Petitioner herein produced certificate from the institution where he has taken training of typing to the effect that he can conveniently type 30 to 40 words per minute. However, fact remains that said institution was not recognised. Therefore, Industrial Court, Nashik, taking into consideration the qualification of the Petitioner decline to grant relief of absorption in permanent

cadre of clerk.

The Industrial Court, Nashik, has also recorded the finding of fact that the Petitioner who is original complainant is getting Rs. 9.50 paise per day which fact indicate that the complainant is appointed as a helper on daily wages and not as a clerk because the daily wage available to a clerk must be much more than Rs. 9.50 paise per day. There is however, no evidence led by the Petitioner or by the Respondents on this aspect.

9. Taking into consideration the important aspect of the matter that the Petitioner was not qualified to be appointed on the post of clerk, the Industrial Court, Nashik, decline the relief to the Petitioner that he should be absorbed on the post of Clerk. Therefore, to that extent the findings recorded by the Industrial Court, Nashik needs no interference. The other findings which are recorded in favour of the Petitioner are kept intact.

10. In the light of the above the Writ Petition stands dismissed. However, it is made clear that whatever benefits are ordered by the Industrial Court, Nashik by way of impugned judgment and order to the Petitioner are not disturbed by this Court in this Writ Petition.

The Rule stands discharged. Writ Petition stands dismissed.

In view of the dismissal of the Civil Revision Application, Civil Application, if any stands disposed of accordingly.