
(2014) 06 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 101 of 2008

The Municipal Council

APPELLANT

Vs

Tolaram Tilakdas Meghwani

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 5 ALLMR 811 : (2014) 143 FLR 1069 : (2014) 4 LLJ 581 : (2014) 2 MhLj 944

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : S.G. Loney, Advocate for the Appellant; J.B. Kasat, Advocate and D.M. Kale, Asst. Government Pleader, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Petitioner Municipal Council has sought to assail judgment and order dated 11th September 2007 passed by the Member, Industrial Court, Amravati whereby the petitioner is directed to pay the wages as non-matric clerk to the respondent No. 1 for the period during which he has actually worked on the post of Octroi Clerk.

2. Respondent No. 1 filed Complaint ULP No. 743 of 1996 before the Industrial Court, Amravati stating that he was initially appointed as Peon in 1964 and thereafter in the year 1969 petitioner Municipal Council directed him to work as Octroi Clerk. However, petitioner failed to pay wages and privileges as are applicable to non-matric clerks. Respondent No. 1 thus alleged that petitioner indulged into unfair labour practice as covered by items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971.

3. Heard learned counsel for the parties. Perused the complaint, oral and documentary evidence and impugned judgment & order.

4. It appears that the learned Member of Industrial Court was guided by the admission in the course of cross-examination of the witness examined by petitioner as well as documentary evidence in the form of charts (exhibits 26 and 56) before the Court. There was evidence indicating that the complainant had worked as per muster roll (exhibit 26) during the period from 1.2.1994 to 26.5.1995 as clerk though, in fact, he was appointed as Peon by the Municipal Council when he was ordered to work as Octroi Clerk. Again, it appears that in the chart (exhibit 56), the complainant was ordered to work during the period between 31.3.1998 till 30.4.1999 as clerk. My attention is invited in the course of hearing to the evidence of Rajesh Khadse examined from the establishment of Municipal Council, Achalpur who admitted in the course of cross-examination that as per chart (exhibit 56), complainant had worked on the post of clerk. It is also clearly admitted position on record that complainant was not given any remuneration for having worked on the post of clerk. Admittedly, the said chart was prepared in respect of duties performed by persons working in Octroi Department of the Municipal Council. That being so, learned Member of the Industrial Court while passing the impugned order held that petitioner Municipal Council was liable to pay wages to the complainant since he had worked as clerk in Octroi Department during the period between 31.3.1998 to 30.4.1999 as per exhibit 56.

5. Learned counsel for the petitioner submitted that back-door entry to a particular of clerk cannot have sanction of law. He contends that it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. A person employed in violation of these provisions is not entitled to any relief including salary. He submits that for a valid and legal appointment, mandatory compliance with the said constitutional requirement is to be fulfilled. He further submits that equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit. He has relied on the decision of the Supreme Court in the case of State of Orissa and Another Vs. Mamata Mohanty, .

6. Further, according to learned counsel for petitioner, the principle of "equal pay for equal work" is not applicable in this case due to inherent difficulties in comparing and evaluating the work done by different persons in different organizations or even in the same organization. He submits that it is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay-scales. He has relied on the decision of the Supreme Court in State of Haryana and Another Vs. Tilak Raj and Others, . Reference is also made to the ruling of the Supreme Court in State Bank of India and Another Vs. M.R. Ganesh Babu and Others, to contend that

burden is on the claimant to establish his right to equal pay or the plea of discrimination.

7. Learned counsel for respondent No. 1 submits that respondent is not claiming his wages on the basis of principle of "equal pay for equal work" as has been considered in the decisions cited by the counsel for petitioner. Respondent-workman is claiming wages for limited period during which he was ordered by his employer to work as clerk in Octroi Department though he was employed as "Peon" on the establishment of Municipal Council.

8. On going through the oral and documentary evidence I find that on the basis of admission in the cross-examination and on the basis of charts (exhibits 26 and 56) the Industrial Court was pleased to grant wages as non-matric clerk to the complainant only for the period during which he had actually worked on the post of Octroi Clerk as ordered by employer. The rulings cited by learned counsel for petitioner are distinguishable since complainant was neither demanding permanency nor claiming relief upon principle of "equal pay for equal work". What he was legitimately demanding was wages for the period during which complainant had actually worked on the post of Octroi Clerk as ordered by his employer. Hence, the impugned judgment & order cannot be criticized as infirm, improper or incorrect.

9. In the result, there is no merit in the petition of the petitioner Municipal Council. The same is dismissed. Rule is discharged with no order as to costs.