

(2011) 06 BOM CK 0169
In the Bombay High Court
Case No : Writ Petition No. 105 of 2011

The Municipal Council, Bhadrawati

APPELLANT

Vs

Arvind Bhusari

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 6 BomCR 341 : (2011) 130 FLR 698 : (2011) 4 MhLj 815

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : M.I. Dhattrak, for the Appellant; P.S. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The judgment and Order dated 29th September, 2010 passed by the Industrial Court, Chandrapur in Complaint (ULP) No. 47 of 2006 is the subject-matter of challenge in Writ Petition No. 105 of 2010 and the judgment and order dated 29th September, 2010 passed by the Industrial Court, Chandrapur in Complaint (ULP) No. 47 of 2006 is the subject-matter of challenge in W.P. No. 106 of 2011. The Petitioner -Municipal Council has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

3. Since common issue arises in view of the final direction, which has been issued in the operative part of the impugned judgments and orders, the above petitions are taken up for hearing together and disposed of as such.

4. For the sake of convenience, facts in above Writ Petition No. 105 of 2010 would be narrated.

The Petitioner is a Municipal Council, established under the provisions of Maharashtra (Municipal Councils) (Nagar Panchayats) and Industrial Townships

Act, 1965 (for brevities sake referred to as the Act of 1965). The Petitioner - Municipal Council was established as such on 14/8/1997 after conversion of the village Panchayats, which were within its territorial area. The Respondent No. 1 herein was in employment of one of the Grampanchayats from 12/8/1997 on daily wages as a Clerk and was employed as such as per available work. The Respondent is continuing as a daily wager with the Municipal Council on its establishment. The Respondent herein filed a complaint ULP invoking Item Nos. 5, 6 and 7 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 seeking regularization of his services and claiming service benefits as a permanent employee. The Petitioner herein filed its written statement denying the claim of the Respondent on various grounds and contended that as per the policy decision of the State Government there can be regularization of only those daily wagers, who are appointed prior to the year 1993. It was contended that the Labour Legislations are not applicable to the Petitioner as the Petitioner is governed by the Act of 1965. The Petitioner denied discrimination between the two sets of workers.

5. The parties went to trial. The complainant examined himself in support of his case. The learned Member, Industrial Court culled out the propositions, which find place in paragraph No. 15, which are reproduced hereunder.

15] Thus, after considering the entire cross examination of Respondent's witness it will find that the following propositions are emerging:

- 1) The Respondent has been enjoying the service of complainant right from 1997;
- 2) The Respondent has from time to time directed the complainant to work as a clerk;
- 3) The complainant is not holding requisite educational qualifications to the said post;
- 4) The complainant has rendered uninterrupted service to the extent of 240 days in every year;
- 5) There is no contra evidence on record to hold that the complainant was appointed on job basis or a contract basis for a stipulated period.

Relying upon the said propositions, the Industrial Court held that the appointment of the complainant cannot be said to be illegal and further held that the ratio of the judgment reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, could not be made applicable. However, the Industrial Court held that the Municipal Council cannot be directed to confirm the complainant in the post asked for, in the absence of necessary qualifications. The Industrial Court, therefore, observed that on the said ground the complaint must fail. Operative part of the order passed by the Industrial Court reads as follows -

The complaint stands dismissed, however, it is made clear that after considering longevity of service rendered by the complainant his case should be considered

for regularizing his service in any other cadre wherever his services can be utilized considering his qualifications.

6. The Industrial Court, as can be seen, taking into consideration the service rendered by the Respondent No. 1 herein directed that he should be considered for regularizing his service in any other cadre wherever his services can be utilized considering his qualifications.

7. As indicated above, it is the said order directing the regularization of his services in any other cadre, which is taken exception to by the Petitioner - Municipal Council.

8. Heard the learned Counsel for the parties.

9. Submissions were advanced in support and against the impugned order, whereas it was the case of the learned Counsel for the Petitioner herein that the directions are unsustainable in the context of the public employment which is envisaged under the Municipal Council. The learned Counsel for the Respondent - employee supported the said direction in the operative part by contending that since the Respondent did not have the educational qualifications, the Industrial Court had molded the reliefs having regard to the provisions of the MRTU and PULP Act.

10. In my view, the order, in so far as it directs that the Respondent should be considered for regularization against any post in any other cadre, is wholly unsustainable. The employment under the Municipal Council is a public employment governed by the Rules and Regulations and also the directions issued by the State Government from time to time. The retinue of the employees of the Municipal Council is sanctioned by the State Government through the Director of Municipal Administration and therefore for appointment of any employee in any cadre, the same can be done by adhering to the statutory rules and regulations.

11. In the instant case, the Industrial Court was right in refusing the relief of regularization to the Respondent on the ground that he did not have the educational qualifications. However, thereafter it has totally misdirected itself by directing the Petitioner - Municipal Council to regularize the services of the Respondent in any post in any other cadre where his educational qualifications entitle him to be so appointed. In my view, that is impermissible, as the Respondent No. 1 could have at the highest be regularized in the post which he was claiming and not in any other post in the Municipal Council. If the said course of action is permitted to be followed, it will create chaos as there might be other employees in queue for the said post, who are waiting to be regularized in terms of the policy that may have been formulated by the State Government and be implemented by the Municipal Council. In that view of the matter, the impugned judgments and orders dated 29/9/2010, in so far as the same directs the regularization of the Respondent No. 1 in both the petitions in any other posts, is required to be set aside and is accordingly set aside. However, since the

complaint itself has been dismissed by the Industrial Court, the said dismissal calls for no interference. Rule is accordingly made absolute with parties to bear their respective costs.