

MHIC120008632015



IN THE COURT OF MEMBER, INDUSTRIAL COURT, PUNE.

Presided Over by Shri. S. M. Bukke

Complaint (ULP) No. 5000102/2016

Vikramsingh Choukidar Bhat ... Complainant

VERSUS

The Municipal Commissioner P.C.M.C. ... Respondents
and Ors.

Advocate for the complainant : Smt. V. S. Sareen
Advocate for the respondents : Shri. S. B. Malegaonkar

ORDER BELOW EXH. U-15
(Delivered on -23-10-2024)

1. This is an application on behalf of complainant to direct the respondent to produce documents.

2. The application in brief is as under :-

The complainant has filed complaint under Item 6 and 9 of Schedule IV of the MRTU and PULP Act for permanency benefits. He is working with respondent from 11/03/2001 to 31/07/2005. This fact is denied by respondent. Therefore, in order to prove the

complainant has rendered more than 240 days continuous service from his appointment. The respondent may be directed to produce muster-cum-wage register of complainant from 05/05/2001 to 31/07/2005 and sanctioned staffing pattern.

3. The respondent strongly objected application because it is not tenable in the light of judgment of Umadevi Vs. State of Karnataka. Therefore, application be rejected as Corporation is not an Industrial establishment.

4. Heard, perused.

5. The Ld. Advocate Shri. Malegaonkar appearing on behalf of respondent submitted that the municipal corporation is local authority. It is not an establishment and industrial undertaking. The local authority is not private business or trade. Therefore, this Court cannot grant permanency as claimed. The complaint itself is not maintainable therefore, complainant is not entitled for relief of production of document. In support of his argument he relied upon the verdict of the Hon'ble Bombay High Court reported in **Sangli Miraj Kupwad Cities Municipal Corporation, Sangli Vs. Mahapalika Kamgar Sabha, Sangli**, wherein the Hon'ble Bombay High Court held that the provisions of I.E.S.O. Act is not applicable to the Municipal Corporation for the purposes of grant of permanency. With due respect I have to submit that cited case law is not applicable to case in hand at the stage of application for production of document. It has to be decided on merit whether respondent Corporation is governed by the provisions of MRTU and PULP Act or not.

6. The Ld. Counsel further submitted that the complainant were employed on contractual basis. The provisions of Bombay Municipal Corporation Act are applicable to the present proceedings and it will prevail over I.E.S.O. Act. In support of his argument he relied upon the verdict of **Pune Municipal Corporation Pune and Ors. Vs. Ashok Sakharam Jadhav**, wherein the Hon'ble Bombay High Court observed that the Industrial Employment Standing Orders Act is special law with regards to the matters enumerated in the Schedule will prevail over the later act. With regard to the matters to which the standing orders act applies. With due respect I have to submit that the ratio laid down in cited case law has nothing to do it the application for notice to produce document. Therefore, it is not applicable to application Exh. U-15 at this stage.

7. The Ld. Counsel further submitted that the complainant was appointed on temporary basis. Therefore, the complainant is not entitled for benefits claimed. In support of his argument he relied upon the verdict of Hon'ble Bombay High Court reported in - **Ramesh Vitthal Patil and Ors. Vs. Kalyan Dombivali Municipal Corporation**, wherein the Hon'ble Bombay High Court observed that - *"The provisions of the B.P.M.C. Act not having been followed, the complainants are not entitled to be regularized and to the benefit of permanency. Thus the Corporation not having granted them the benefits which they are in law not entitled to cannot be said to have indulged in any unfair labour practice. There is nothing on record to establish that their appointments were only to deprive them of the benefits of permanency"*. With due respect the cited case law is not applicable to application Exh. U-15.

8. The Ld. Counsel of respondent ably argued that temporary employee could not claim to be made permanent on expiry of his term of appointment. In support of his argument he relied upon the verdict of Hon'ble Supreme Court reported in Secretary, State of Karnataka Vs. Uma Devi, AIR 2006 Supreme Court 1806, wherein the Hon'ble Apex Court observed that the appointment must be made in accordance with regular recruitment process and cannot be based on patronage or other consideration. Temporary employment cannot replaced regular recruitment and regularizing temporary employment does not make it permanent. Employees who are not regularly appointed cannot demand equal treatment to those who are appointed permanently. Appointments must comply with Article 14 and 16 of the Constitution which guarantee equality of opportunity in employment. Employee cannot claim regularization without formal assurances from authorities. With due respect I have to submit that the aforesaid cited case law is not applicable to the application Exh. U-15.

9. Per contra the Ld. Counsel of complainant submitted that the document muster-cum-wage register and sanctioned staffing pattern of respondent corporation is necessary to prove that the complainant rendered more than 240 days continuous service.

10. Perusal of record it appears that the complainant is seeking permanency benefits. To prove the said fact in issue the muster-cum-wage register is relevant document. The said document is in the possession of respondent. It is necessary and relevant to decide the real question of controversy between the parties. These

documents are relevant and its production is necessary for adjudication of main complaint. The complainant is not permitted to embark on fishing and roving enquiry in the hope that some material will come to hand on the basis of which he can set out his case. The complainant has make out a case why the aforesaid documents will be necessary. In such circumstances the application deserves to allow. Hence, I pass following order :-

ORDER

- 1) Application (Exh. U-15) is allowed.
- 2) The respondent is directed to produce muster-cum-wage register and sanctioned staffing pattern of the period 05/05/2001 to 31/07/2005 till next date.

Date : -23-10-2024

(Shri. S. M. Bukke)
MEMBER,
INDUSTRIAL COURT, PUNE.

Directly dictated on PC/-