

(1995) 07 BOM CK 0071

Bombay High Court

Case No: Writ Petition No. 5313 to 5315 of 1991

Chief Officer, Ichalkaranji
Municipal Council

APPELLANT

Vs

Anna Shridhar Gath and another

RESPONDENT

Date of Decision: July 20, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1997) 3 LLJ 1241

Hon'ble Judges: B.N. Srikrishna, J

Bench: Single Bench

Advocate: Y.R. Naik, for the Appellant; S.M. Dharap, for the Respondent

Judgement

1. These three Writ Petitions under Article 227 of the Constitution of India impugn the orders made by the Industrial Court, Kolhapur, in Complaints filed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). The Petitioner in each Petition is the Chief Officer of Ichalkaranji Municipal Council (hereinafter referred to as "Petitioner Council"), a Municipal Council set up under the Maharashtra Municipalities Act, 1965. The 1st Respondent in each of the Writ Petitions (hereinafter referred to as "Respondent Workman") is an employee of the Municipal Council.

2. By an Award dated April 12, 1975, made in Reference (IT) No. 479 of 1979 several conditions of service of the workmen of the Petitioner Council were settled. Demand No. 11 pertained to the drawing up of a seniority list every year and that all promotions should be strictly granted in accordance with seniority. The material portion of the Award on this demand was, "the Council should draw a seniority list in the month of December every year and the promotions should be as far as possible according to seniority but after taking into account merit and past record of the

workman concerned".

3. In accordance with the directions given in the Award, the Petitioner compiled and published the seniority list of its permanent employees as on December 31, 1989.

4. In the seniority list dated December 31, 1989, the 1st Respondent in Writ Petition No.5313 of 1991 (Anna Shridhar Gath) was at Serial No. 45, the 1st Respondent in Writ Petition No. 5314 of 1991 (Prakash Dattatraya Jagtap) was at Serial No. 66 and the 1st Respondent in Writ Petition No. 5315 of 1991 (Lagmanna Maruti Zawari) was at Serial No. 27. Two employees, Ashok Dhere and Anna Kagale respectively at Serial Nos. 85 and 118 admittedly junior to the 1st Respondent in each of the three Writ Petitions, were promoted as Senior Clerks.

5. The Respondent workmen challenged the promotions granted to Ashok Dhere and Anna Kagale by their Complaints (ULP) No. 167 of 1988, 63 of 1988 and 197 of 1988. The case made out in the Complaints was that the Petitioner Council had engaged in an unfair labour practice within the meaning of items 5 and 9 of Schedule IV of the Act by giving out of turn promotions to the said Ashok Dhere and Anna Kagale, though they were admittedly juniors to the Respondent workmen. It was also alleged that the promotions granted to Ashok Dhere and Anna Kagale were solely actuated by favouritism and contrary to the terms of the Award of the Industrial Tribunal made in Reference (IT) No. 479 of 1975 and hence unfair labour practice within the meaning of Items 5 and 9 of Schedule IV of the Act.

6. Before the Industrial Court, the Respondent workmen did not claim relief by way of reversion of the said Ashok Dhere and Anna Kagale. They relied on the Circulars dated February 25, 1965 and October 24, 1979 issued by the Government of Maharashtra and the Director of Municipal Administration, in which it was provided that, where seniors in service were found to have been wrongly superseded by the juniors, the situation should be ratified by granting deemed promotions to the seniors as from the same date on which the juniors were promoted and by making available to them all consequential benefits from such dates.

7. Though the Industrial Court had found that, by ignoring the seniority of the Respondent workmen and granting promotion to said Ashok Dhere and Anna Kagale, the Petitioner Council had engaged in an unfair labour practice as alleged, it decided not to follow the course of reverting the said Ashok Dhere and Anna Kagale, who had been recently promoted, but to follow the course indicated in the aforesaid Circulars of the Government of Maharashtra. Consequently, by the impugned order in each of the Complaints, the Industrial Court has directed as follows :-

".....

The Respondent is directed to give promotion to the Complainant at the time when the higher post was vacant for the promotion if to that post the claim of the Complainant was due by way of seniority. The Complainant be deemed to be

promoted since then and entitled for consequential benefits. No order as to costs."

8. These are the orders which are impugned in this group of Writ Petitions.

9. Mr. Y. R. Naik, learned Advocate for the Petitioner Council, urges that the Complaints and the Writ Petitions must fail for failure to join the said Ashok Dhere and Anna Kagale who were necessary parties. It is true that they were necessary parties and they ought to have been joined in the proceedings below and here, if any orders adversely affecting them were to be passed. The Industrial Court has merely given the Respondent workmen their due without disturbing what was already granted to the said Ashok Dhere and Anna Kagale. Hence, not joining them as Respondents to the complaints or in these Writ Petitions, becomes immaterial, in my view. The said contention, therefore, must fail.

10. The direction given in the Award with regard to the demand for preparation of seniority list and criterion of seniority as promotion, is important and, if the Petitioner Council had strictly followed it, many of the difficulties which have arisen could have been avoided. The direction given in the Award is that, "the promotions should be, as far as possible, according to seniority, but after taking into account merit and past record of the worker concerned". The only reasonable manner in which this direction can be construed is that : (a) all promotions should be granted accordance with seniority; (b) if a senior workman has an adverse past record, then only seniority should be over looked and the next senior Junior Clerk can be considered for promotion; and (c) it also means that, as between two workmen whose seniority is identical, the one with better merit is to be promoted. If these principles had been followed, the spate of litigation and expenditure of public time, energy and money could have been avoided.

11. Mr. S. M. Dharap, learned Counsel for the Respondent workman informs me that the 1st Respondent workman in Writ Petition No. 5313 of 1991 (Anna Shridhar Gath) and the 1st Respondent workman in Writ Petition No. 5315 of 1991 (Lagmanna Maruti Zamari) have retired from service and the orders of the Industrial Court have already been implemented in respect of them.

12. In the result, I find no substance in these three Writ Petitions, which are dismissed. Rules issued therein are discharged. No order as to costs.

13. Issuance of certified copy of this judgment is expedited.