

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1049 OF 2016

DISTRICT : THANE

Shri Anant Ganpat Bhosale.)
Aged : 56 Yrs, Working as Electrician in)
the Central Hospital, Ulhasnagar, having)
Office at Ulhasnagar, Dist : Thane and)
Residing at Ravikiran CHS Building No.1,)
101, Sawant Park, Near Kailas Nagar,)
Vadavli Section, Ambernath (E),)
District : Thane.)...**Applicant**

Versus

1. The Commissioner of Health)
Services-cum-Mission Director,)
National Health Mission, M.S,)
Mumbai (the then Director of Health)
Services), having office at Aarogya)
Bhavan, in the campus of Saint)
Georges' Hospital, P.D'Mello Road,)
Mumbai 400 001.)
2. The Deputy Director.)
Health Services, Mumbai Circle,)
Thane, having office at Regional)
Mental Hospital Compound,)
Thane (W), Mumbai 400 604.)



3. The State of Maharashtra.)
 Through the Principal Secretary,)
 Public Health Department,)
 Mantralaya, Mumbai - 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri K.B. Bhise, Presenting Officer for Respondents.


CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 12.01.2017

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is brought by an Electrician in Central Hospital, Ulhasnagar in District Thane having been aggrieved by and seeking the quashing and setting aside of the order dated 23rd August, 2016 (Exh. 'A', Page 29 of the Paper Book (PB)), whereby the temporary service of the Applicant to the post of Electrician came to be terminated on the ground of eligibility. The Applicant claims all consequential benefits and a further declaration that he is entitled for his services in the post of Electrician for being regularized or having already regularized from the initial date of appointment from



17.2.1986.

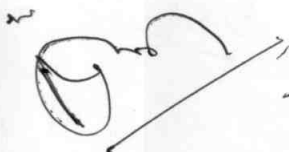
2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

3. The Applicant was born on 22nd January, 1959 in which case, this month end, he would have retired in any case on superannuation. He claims to have passed PWD Wiremen course on 3.6.1980 (Exh. 'C'). He got his name enrolled with the Employment Exchange. Ultimately, he came to be appointed to the Government service as Wireman (Electrician) in the pay scale of Rs.290-540. At that time, these posts were governed by no statutory Recruitment Rules and the employment was governed by a certain G.R. of 30.9.1959. A copy of which GR has been annexed not by the Applicant to the OA but by the Respondents in their Affidavit-in-reply at Exh.'R-3'. The post therein mentioned inter-alia are Electricians and Electric Mechanics, Head Wireman, Wireman, Refrigerator Electricians, etc., Lift Electricians, Instrument Repairers and Armature Winders and finally Electrical Fitters. He was appointed initially on temporary basis for a period of

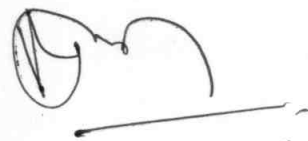


29 days and worked till 30.9.1988 on which date, his services came to be an end.

4. Thereafter, the Applicant along with a few others similarly placed workmen moved the Hon'ble Industrial Court, Maharashtra Bench at Thane by invoking the relevant provisions of Maharashtra Recognition of Trade Unions and Prevention of Unlawful Practices Act (the said complaint or ULP). The number thereof was Complaint No.499/1998. Again a copy thereof has not been annexed by the Applicant to the OA, but we are greatly facilitated by the cooperation of the Respondents who have annexed a copy of the Judgment of the Hon'ble Industrial Court at Exh. 'R-1' to their Affidavit-in-reply. There were other Complainants also whose similar complaints were decided by a common Judgment by the Hon'ble Industrial Court. We shall naturally keep ourselves restricted to the case of the present Applicant. In Para 11, the Hon'ble Industrial Court observed that the Applicant was initially appointed on 15.2.1986 as a Wireman and continued in the employment till September, 1988. His last drawn salary was Rs.1,350/-. He was given artificial break after 29 days. His case before the Hon'ble Industrial Court was that he had completed 240 days in a year of continuous service which one knows has its own significance in the



realm of Industrial Law. The complaints were laid under Items 5, 6, 9 and 10 of IV of the MRTU Act. The Hon'ble Industrial Court held against the Complainants on the issue of continuous employment from various dates of 1986, it was also held against the Applicant on the issue of continuous service upto 240 days and on the issue of illegal termination of services. It was, however, held that Unfair Labour Practices under Item 9 of Schedule IV was only established. In Para 35, the Hon'ble Industrial Court held that in so far as the present Applicant was concerned, his services were terminated on 1.5.1988 while he filed the complaint on 27.9.1989 which was beyond the period of 90 days, and therefore, his complaint was time barred. But it was also recorded that on the strength of an interim relief granted by the said Court, the Applicant continued to be in service and the employer did not challenge that interim order. In Para 46 of the Judgment of the Hon'ble Industrial Court, it was observed that the Applicant and other Complainants had worked on various posts in the leave vacancy of permanent employees and they had worked for years together. Whenever the vacancies kept arising, they would be called and provided work. After the interim orders of the Hon'ble Industrial Court, they continued in the employment for about 10 years, without that order having been challenged in any manner. It was,




therefore, clear that the services of those workmen (including the Applicant) were required for the Respondent Hospital, and therefore, in the interest of justice, it was proper and desirable for the Respondents to absorb the Complainants in the permanent posts/vacancies whenever they arose or if any permanent employee retired. The Respondents were directed by the Hon'ble Industrial Court to prepare a list of seniority and the seniority to those Complainants. Partly allowing the complaints, the following order was made by the Hon'ble Industrial Court.

"O R D E R

"Complaint (ULP) Nos.491/89, 494/89, 495/89, 499/89 are partly allowed.

It is declared that the Respondent has committed unfair labour practice under item 9 of Schedule-IV of the Act. The Respondent shall cease and desist from committing such unfair Labour practice. The Respondent is to prepare the seniority list of all the Complainants per procedure laid down in clause 4(d) of the Industrial Employment (Model Standing) orders Act, 1946, and shall give employment by giving preference to the respective posts. Similarly whenever the permanent posts are created or permanent vacancies arises due to retirement etc.



these complainants be appointed regular employment in the said posts, if at all they are found suitable and fulfilling the necessary requirements.

Complaints under items 5, 6 and 10 of Schedule IV of the MRTU & PULP Act is dismissed.

No order as to costs.

Dt : 29.02.2000

Sd/-
(A.U. Purandare)
Member
Industrial Court, Thane."

5. The above order of the Hon'ble Industrial Court was challenged by way of **Writ Petition No.1482/2001 (The Superintendent, Central Hospital, Ulhasnagar and one another Vs. Anant G. Bhosale, dated 26th September, 2005)**. A copy of the order of the Hon'ble High Court is placed on record and we have carefully perused it. In Para 4, the Hon'ble High Court was pleased to observe that the original Respondent (Respondent here also) had not maintained the waiting list as per the relevant standing order to ensure that whenever vacancies arose, the persons from the said from the said waiting list should be given preference over the others and it was categorically observed by the Hon'ble High Court that there was a specific bar for appointment of anybody else other than the



persons on the waiting list. In this view of the matter, the impugned Judgment of the Hon'ble Industrial Court was upheld by the Hon'ble High Court and the Writ Petition was dismissed.

6. The Respondents carried the matter to the Apex Court by filing petition for **Special Leave (Civil) No.15170/2006 (Superintendent, Central Hospital, Ulhasnagar and one another Vs. Anant G. Bhosale.** On 27th August, 2007, the Hon'ble Supreme Court was pleased to condone the delay, hear the said SLP and dismiss it.

7. It is a matter of great significance that there is a certain effect of the judicial orders made by the Hon'ble Industrial Court, the Hon'ble High Court and the Hon'ble Supreme Court. The directions in the form of the final order of the Hon'ble Industrial Court were fully upheld and the present Respondents were directed to do the needful. Although, nobody tried to simplify the matter before us, but it is a matter of great significance, in our view that the Respondents while making the impugned order, ought to have keep themselves aware of the letter, spirit, pith and substance of the judicial orders above referred to, rather than mechanically mentioning them in their orders and not following them. In such matters where there are judicial



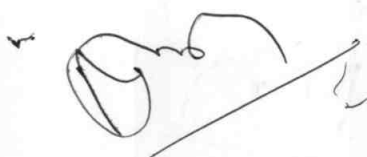
orders, how one wishes the usual obstinacy and self-righteousness got substituted by sound reasoning in keeping with the judicial orders.

8. At this stage, we may mention that the Applicant apparently continued in the same manner and now, is the stage, where we may note the gist of the impugned order in Marathi, which is dated 23rd August, 2016 made by the Director, Health Services although he has not been impleaded as a party but the Commissioner of Health Services-cum-Mission Director, National Health Mission (1st Respondent), Deputy Director, Health Services, Mumbai Circle (2nd Respondent) and State of Maharashtra in Public Health Department (3rd Respondent) have been impleaded as party Respondents.

9. The impugned order recites that the temporary services of the Applicant were terminated w.e.f.30.9.1988 and he had made a complaint to the Hon'ble Industrial Court above referred. The impugned order interpreted the Judgment of the Hon'ble Industrial Court to mean that they will have to examine the eligibility of the Applicant before granting him the employment. In our opinion, although there may have been such an observation in the Judgment of the Hon'ble Industrial Court but the



impugned order somewhat ill-advisedly tore a few sentences almost isolated them with others that they kept company with and completely ignored the observations made by the Hon'ble Industrial Court in its totality and more particularly, the observations of the Hon'ble High Court. As a matter of fact, when we discuss the facts to the extent necessary, it would be found that even on facts, the Respondents are not on sound ground. Quite pertinently, the judicial orders by no stretch of imagination could be so interpreted as to deprive the Applicant even of his status as a temporary employee which the impugned order ended up doing. Proceeding further with the impugned order, the said order refers to an order of this very Bench in **OA 180/2013 (Shri Anant G. Bhosale Vs. Civil Surgeon, Central Hospital, Ulhasnagar and one another, dated 11.9.2014)**, which is also there as a part of record hereof, a copy whereof is perused by us (Exh. 'H', Page 47 of the PB). A direction was therein sought by the Applicant for being given regular and permanent appointment to the post of Electrician as per the decision of the Hon'ble Industrial Court confirmed by the Hon'ble Bombay High Court and Hon'ble Supreme Court. It was observed all about the initial appointment and termination of the Applicant and the judicial proceedings above referred to, having been adopted by him. This Bench was informed



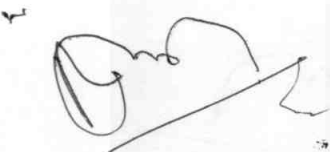
that at that point in time, regular post of Electrician was available on the establishment of the 1st Respondent and the Applicant was entitled to be appointed as Electrician. The Respondents as usual vociferously opposed the application through the learned PO. It was held by this Bench that the Applicant pressed for the relief that the 3rd Respondent viz. the State of Maharashtra in Public Health Department be directed to take a decision on the proposal which was favourable to the Applicant as submitted by the Deputy Director, Health Services on 21.8.2010. It is, therefore, quite clear that at that time, even the present Respondent No.2 was quite clearly favourably disposed to the Applicant. It was conceded by the Respondents that no decision had been taken in that regard, and therefore, this Bench felt that the ends of justice would be met if the Government in Health Department was directed to take a decision on the report of the 2nd Respondent - Deputy Director, Health Services in a given time frame which was fixed at three months from 11.9.2014 which expired on 10.12.2014. But the impugned order could be made only on 23rd August, 2016.

10. Reverting back to the impugned order, it mentions that as per the GR of 1st March, 2006 of Public Health Department (Exh. 'L', Page 67 of the PB), only one

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line and a small flourish.

post was shown in the Ulhasnagar Hospital, of Electrician (वीजतंत्री) in the pay scale of Rs.3200-4900. There was no equivalent post shown there (त्यात समावेशन करावयाच्या पदांमध्ये वीजतंत्री या पदाचा उल्लेख नाही. यावरून पुर्वीपासून मध्यवर्ती रुग्णालय, उल्हासनगर, ठाणे येथे तारतंत्री हे पद मंजूर नसून वीजतंत्री हे पद उपलब्ध होते असे दिसून येते). It was further observed that in the Public Health Department, the post of, "वीजतंत्री" was not available and the Draft Rules for that post had been submitted to the Government on 27.3.2002, but they had not been approved as on the day, the impugned order was issued.

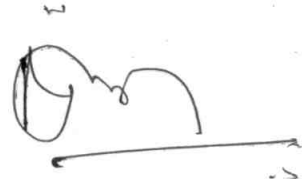
11. It is further observed in the impugned order that while giving temporary appointment to the Applicant, the GR of 30.9.1959 above referred to, was very much in the field and the Recruitment Rules of PWD (Electrical) were also in the field. Therefore, the maximum age limit would be 25 and it was compulsory that he should have cleared 10th standard and ITI, etc. The Applicant belonged to Open category and he was 27 years old at the time of his first appointment and he had not passed 10th Standard, though he had cleared the State Government examination for "तारतंत्री", and therefore, he did not comply with the requisite eligibility criterion for the said post and he was consequently declared "unfit" and such a fact should be brought to the notice of the Court.



12. In the first place, we are not quite sure that the Respondents having deliberately over-shot the time limit fixed by this Bench in OA 180/2013 without seeking an extension could have made an order like the present one, which was adverse to the Applicant. We deprecate the manner in which the insincerity is exhibited by not keeping the time limit. The same needs to be conveyed to the concerned authority.

13. Without prejudice to what has been mentioned above, we find that the impugned order proceeds with complete ignorance of the fact that with whatever infirmity, the impugned order might conceive of, the Applicant had continued ever since, he was reinstated as per the mandate of the Hon'ble Industrial Court and then the Hon'ble High Court and the Hon'ble Supreme Court were pleased to uphold the said order. Therefore, instead of meticulously trying to find ways and means to ease out the Applicant, it would have been proper if due regard was shown to the significance of the binding judicial orders, which attributes we find missing in the impugned order.

14. Now, various Marathi words like वीजतंत्री, तारतंत्री, etc. have been used, but nothing has been placed on record to indicate that the elementary nature of the functioning



thereof was anything other than that of Electrician which the Applicant undoubtedly is. Our own reading of 1959 GR for the post relevant hereto, the requirement of SCC does not appear to be there although the requirement of a certain Certificate which the Applicant did possess (Exh. 'C', Page 35 of the PB) is very much there. One cannot say by any stretch of imagination that the issue of the age at the time of initial appointment was not in the picture at the time of the hearing of the complaint before the Hon'ble Industrial Court, Hon'ble High Court and Hon'ble Supreme Court, and therefore, in the peculiar set of circumstances, the Applicant would have to be taken as he is without causing him any prejudice or loss.

15. In so far as the Public Health Department's GR of 1st March, 2006 is concerned (Exh. 'L, Page 57), the post mentioned therein in Marathi is 'वीजतंत्री' at Serial No.42 (Page 60 of the PB). In the absence of any other material on record and keeping ourselves severely restricted to the peculiar facts pertaining to the Applicant, these words in Marathi can be interchangeably used so long as the basic nature of the functioning remains of the Electrician.

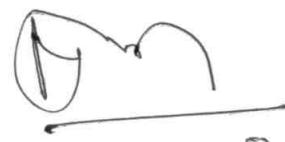


16. Para 4 of the Affidavit of Shri Dilip D. Panpatil, Chief Administrative Officer filed on 21st December, 2016 in fact needs to be fully reproduced.

“4. With reference to Para 3, I say and submit that Respondents humbly submit that the decision of the discontinuation of the services of the applicant was taken since he did not found eligible to be appointed on permanent basis. As such, it is presumed that the Respondents have not made contempt. However, the Respondents request to confirm the assumption that the order of the Hon'ble Industrial Court was to continue the applicant till the decision on permanent absorption of the applicant in service.”

17. It is not possible to quite comprehend as to what the Respondents wanted to convey. After-all, the judicial orders which are very much there in this case are required to be read, understood and implemented. However, if still some confirmation was necessary, the crux of the above findings is that the Applicant is entitled to relief.

18. The upshot, therefore, is that the Respondents will have to act in accordance herewith and as a fall out, the impugned order will have to be quashed and set aside.



19. The order herein impugned is hereby quashed and set aside. The Respondents are directed to treat the Applicant in continuous duty even during the period, the impugned order was current with all service benefits. They shall scrupulously act in accordance with the directions of the Hon'ble Industrial Court referred to hereinabove, confirmed by the Hon'ble High Court in the Writ Petition and by the Hon'ble Supreme Court in the Special Leave Petition in the matter of regularization of the services of the Applicant with all service benefits of every nature. The compliance within four weeks. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
12.01.2017

Sd/-

(Rajiv Agarwal)
Vice-Chairman
12.01.2017

Mumbai

Date : 12.01.2017

Dictation taken by :

S.K. Wamanse.

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