IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.4783 of 2006

Shri Shakil Ahmed Abdul Karim Petitioner

Vs.

Malegaon Corporation, Malegaon Respondent

Mr.S.D.Patil for petitioner.

Mr.A.K.Jalisatgi and Mr.A.B.Desai for respondent.

CORAM: B.H.MARLAPALLE,J.

July 31, 2006.

P.C.

1. Heard Mr.Patil, the learned counsel for the petitioner and Mr.Jalisatgi with Mr.Desai, the learned counsel for the respondent - Corporation. The petitioner, a temporary appointee for a period of six months or till the regularly selected candidate is appointed (whichever is earlier) as per the order dated 3/7/1993 approached the Labour Court by filing Complaint (ULP) No. 199 of 1993 on or about 25/11/1993 i.e. before the expiry of the six months period and obtained an order of interim relief from the Labour Court thereby restraining the Respondent -

Corporation from terminating his service. The Corporation contested the matter on the grounds that the complainant was a temporary appointee and he had no right of permanent employment and in any case he was not selected by following the due procedure. The Corporation further pointed out that he was continued in service only to honour the ex-parte order of stay granted by the Labour Court. After hearing both the parties the learned Judge of the Labour Court was pleased to allow the complaint vide judgment and order dated 19/12/2003 by holding that the Corporation had engaged in acts of unfair labour practice listed in Item 1 sub-clauses (a) and (b) of Schedule IV of the MRTU & PULP Act, 1971 (for short "the Act") and he was entitled to be reinstated with continuity of service with full backwages. In the operative part of the order dated 19/12/2003 the learned Judge of the Labour Court ordered thus:

> "1. It is hereby declared that the proposed termination of services of the complainant w.e.f. 30-11-1993 is unfair labour practice under item 1(a) & (b) of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971.

2. Hence, the proposed termination of services of the complainant is hereby set aside.

3. Complainant is in service respondent and getting wages.

4. The respondent is hereby directed not to terminate the services of the complainant.

There is no order as to costs."

2. Prior to this order of the Labour Court the petitioner was transferred by the Corporation vide its order dated 12/9/2003 as a ward boy at its Kusamba Road Dispensary. The Corporation challenged the Labour Court's order by filing Revision Application (ULP) No.93 of 2004 before the Industrial Court at Nashik and the said revision was allowed by the learned Member of the Industrial Court vide his judgment and order dated 1st February 2006. The order of the Labour Court was set aside and Complaint (ULP) No,199 of 1993 came to be dismissed by the learned Member of the Industrial Court. This petition challenges the judgment and order of the

Industrial Court and further takes exception to the order dated 4th July 2006 passed by the Respondent-Corporation by following the decision of the Industrial Court.

3. The appointment order dated 3/7/1993 issued to the petitioner under Section 76(3) of the Maharashtra Municipalities Act, 1965 by the Chief Officer of the Respondent No.1 which was a Municipality at the relevant time clearly stated that it was on temporary basis for a period of six months or till the regularly appointed candidate joined, whichever would be earlier. The learned Judge of the Labour Court on 25/11/1993 passed an order ex-parte to maintain status quo and by the subsequent order dated 11/2/1994 he further directed the respondent no.1 to continue the petitioner in the employment. The complaint has been allowed by the Labour Court only on the ground that the respondent proposed to terminate the employment of the petitioner and that too without giving notice, without conducting any enquiry and without paying any retrenchment compensation. The learned Judge further noted that the regularly selected candidate from the Selection Board had not come to report to the duty and in any

case the complainant was working continuously from 1993. The learned Judge of the Labour Court indicated that he was unaware of the fact that the petitioner was continued solely because of the interim order directing him to be continued in service.

4. The Industrial Court rightly noted that in the normal course the period of six months would have expired on 2/1/1994 but on 25/11/1993 the petitioner approached the Labour Court notwithstanding the fact that there was no termination order but apprehending his termination on account of expiry of six months period for which he was appointed on temporary basis.

. The learned Member of the Industrial Court noted that the petitioner was appointed on purely temporary basis and for the maximum period of six months. Even if he would be discontinued from 2/1/1994 such a discontinuation would not amount to retrenchment within the meaning of Section 2(oo)(bb) if the Industrial Disputes Act, 1971 and in any case he did not enter the service of the Municipal Council / Corporation by following the due procedure prescribed for the appointment of the municipal

employees. Therefore, he had no claim for being retained in service under the Municipal Council / Corporation Act. The Industrial Court further noted that the learned Judge of the Labour Court was in gross errors to hold that the Corporation was guilty of unfair labour practice under Item No.1(a) and (b) of Schedule IV of the Act, more so when there was no material before the labour Court to record such a finding. The view taken by the Industrial Court in fact finds support from the recent decision of the Constitution Bench in the case of Secretary, State of Karnataka v. Umadevi & ors. **[JT 2006 (4) SC 420].**

5. Mr.Patil, the learned counsel for the petitioner submitted that the petitioner was continued all along, he was included in the seniority list at Sr.No.76, was transferred on 12/9/2003 and had also attained permanent status in the employment of the Respondent No.1 and, therefore, he could not have been terminated by the notice dated 4th July 2006 unless he was issued a charge-sheet and a domestic enquiry was conducted against him. These submissions are required to be considered only for being rejected. The termination order is a self speaking order and it squarely flows from the

decision of the Industrial Court. As noted earlier, the learned Judge of the Labour Court while allowing the petitioner's complaint had directed the respondent not to terminate the services of the complainant i.e. the petitioner and this order of the Labour Court has been set aside by the Industrial Court while allowing the revision application filed by the Respondent-Corporation. The Corporation was, therefore, at liberty to discontinue the petitioner's engagement. No illegality could be found in the order dated 4/7/2006. There was no evidence to show that the petitioner was made permanent in the employment of the Corporation.

6. In its revisionary powers under Section 44 of the Act, the Industrial Court is entitled to interfere with the order of the Labour Court if it is satisfied that the said order suffers from errors apparent on the face of the record and it was perverse. The reasoning given by the Industrial Court in the impugned decision clearly indicates the satisfaction of the Industrial Court that the Labour Court's decision was perverse and it was palpably erroneous. The petitioner, who was a tenured temporary employee, was required to be continued by

the Respondent - Corporation for more than 13 years solely because of the interim directions given by the Labour Court. His tenure of 13 years could have been taken into consideration in his favour if he had entered the service of the Corporation as a result of the selection made while following the due procedure for appointment under the Municipal Council / Corporation at the relevant time and admittedly no such procedure was followed as he was appointed purely on temporary basis for a maximum period of six months.

7. Hence there is no merit in the challenge to the impugned decision of the Industrial Court and this petition, therefore, fails at the threshold. It is hereby rejected summarily under Article 227 of the Constitution. However, if the Respondent - Corporation undertakes recruitment of permanent employees for the posts including that of the ward boy or any other post of peon etc., the petitioner shall be considered as an eligible candidate subject to his educational qualifications for undergoing selection for such a post and he shall not be considered age bar provided such a recruitment is undertaken within a period of one year from today.

At the same time the Corporation is bound to follow the well established legal principle that one temporary employee cannot be substituted by another such employee.

(B.H.MARLAPALLE,J.)