



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7659 OF 2004

Municipal Council Yawal
VERSUS
Nilkant Shankarrao Yadav

Mr. L. V. Sangit, Advocate for petitioner
Mr. V. P. Patil, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 14th DECEMBER, 2024

PER COURT :-

1. This petition takes exception to the order dated 04.09.2004 passed by the learned Industrial Court in complaint ULP No. 121/2002.
2. Learned Industrial Court while allowing the said complaint has passed following order;

"O R D E R

1. *The complaint ULP No.121/2002 is hereby allowed as prayed.*
2. *It is hereby declared that the respondent has committed unfair labour practices under Item Nos.5,6,9 and 10 of Sch.IV of the M.R.T.U & P.U.L.P Act, 1971.*
3. *The respondent is directed to pay the wages to the complainant under the wage scale of Wireman with immediate effect and the difference in wage scale should be paid to the complainant from the date of filing of the present complaint within the period of one month from the date of receipt of this order.*

4. *The respondent is hereby directed to take immediate steps and submit the proposal for getting sanction of the post of Wireman from the appropriate authority with retrospective effect.*

5. *No order as to costs."*

3. Petitioner is Municipal Council and being aggrieved by the said judgment has preferred this petition on the ground specified in the memo of petition.

4. Parties are referred to as Council and Workman for the sake of brevity.

5. The facts, which led to the filing of the petition, can be narrated in brief as under.

The workman is employed with Council with effect from 01.12.1975 as a watchman. It is his case that though he was appointed as a watchman from 20.09.1976, he was called upon to work as a Light Peon. It is his submission that the work in fact performed by him was that of wireman. It is further stated that since 1976 till filing of the complaint, he used to perform the work as a wireman. Further, he has not been paid salary of wireman but was paid salary applicable to the grade of a peon. He, therefore, contended that following the principle of equal work equal pay, non payment of wages of wireman amounts to

Unfair Labour Practice. He, therefore, filed complaint ULP No. 121/2002 seeking following reliefs.

“अ. सामनेवाला यांची चौकशी होउन सामनेवाला यांनी अनुचीत कामगार प्रथेचा अवलंब केला आहे असे ठरवून मिळावे. आणि सामनेवाला यांनी सदरच्या अनुचीत कामगार प्रथेचा अवलंब ताबडतोब थांबवावा असा आदेश सामनेवाला यांना व्हावा.

ब. सामनेवाला यांनी तक्रारदारास सन १९७६ पासून आजतागायत वॉयरमन पदाची वेतनश्रेणी व महागाई भत्ता मिळून पगार निश्चित करून पगारातील निघणारा फरक तक्रारदारास व्याजासहीत अदा करावा असा आदेश सामनेवाला यांना व्हावा

क. तक्रारदारास वॉयरमन पदाचा हुद्दा सामनेवाला यांनी द्यावा असा आदेश सामनेवाला यांना व्हावा.”

6. Municipal Council filed written statement by contending that the workman was never called upon to work as a wireman as no such post exists on the establishment on the Council. It is also contended that there are complaints received against the workman and that his service record is not unblemished. It is also claimed that the pay scale of Light Peon and watchmen is same. It is also averred that the work with regard to the wireman is done by the employees of MSEB and as such, the work done by the workman is not that of wireman.

7. Before learned Industrial Court, workman examined himself as well as relied upon documentary evidence. Council also examined one witness at Exhibit C-12, namely, Ravindra Kashinath Deshmukh. After

hearing both sides, learned Industrial Court passed order allowing the complaint and issuing directions as recorded in above.

8. Learned counsel for the Council submits that the Industrial Court committed error for accepting the case of the workman that he was performing the duties as a wireman. It is his further submission that in absence of there being any sanctioned post of the wireman, pay scale of wireman could not be made applicable to the workman. It is his submission that the Council has no authority to create any post and as such, for want of existence of any post, the direction issued by the learned Industrial Court in Clause No. 3 of the operative part would not sustain. He also took exception to the direction issued for approaching to the appropriate Government for sanction of the post of the wireman in the establishment of Municipal Council.

9. Learned counsel for the Workman supported the impugned order by contending that there is no case is made out by Council in order to cause interference therein. It is his submission by relying upon the judgment of Hon'ble Supreme Court in case of **Randhir Singh V. Union of India and Ors.** that the parity can be applied even in respect of the other establishment wherein the post of wireman is available.

10. The workman has approached to the Industrial Court with

specific prayer that the post of wireman be allotted to the workman and that he be paid the salary of the said post. The Council resisted the said prayer on the ground that no such post exists in the Municipal Council and that no post can be created except for the sanction of the general administration department.

11. Perusal of the evidence on record indicates that the workman by examining himself and by relying upon the documentary evidence has substantiated the fact that though he was appointed as watchman, in fact he was performing duties of wireman. Evidence of the witness of the Council also indicates that from time to time, the Council had issued orders and direction to the workman to do work of a wireman which is technical and skilled in nature. The evidence further indicates that having regard to the nature of the work available with the Council, work of wireman is available with the council. There is finding rendered by the Industrial Court to the effect that it was only on account of non submitting of the proposal to the Competent Authority for getting sanction post of wireman, the post is not created. Further, evidence before the Industrial Court more than sufficiently demonstrates that the work done by the workman was technical and skilled in nature, which cannot be compared with a work of a watchman. In this backdrop, the learned Industrial Court has held that one post of the wireman is very

much essential in day-to-day activities of the concerned Municipal Council. This finding recorded by the Industrial Court is in consonance with evidence on record and hence, cannot be termed as perverse.

12. In view of above discussion, no exception can be allowed to be taken to Clause 4 of the operative part of the impugned judgment. This Court however finds substance in the contention of learned Counsel for the petitioner that unless post of wireman is sanctioned by the appropriate authority, question of payment of allowance of wages/grant of wage scale before such sanction of post, does not arise. Hence, it is clarified that clause 3 of operative part of impugned order shall take effect only after sanction to the post of wireman is granted by appropriate Court/Authority.

13. With above clarification, petition stands disposed of.

(R. M. JOSHI, J.)

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