



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

31 WRIT PETITION NO. 2022 OF 2023

Narmadabai Radhakisan Fulari And Others

VERSUS

Department Of Forest Through Its Deputy Forest Conservator

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Advocate for the Petitioner : Mr. Barde Parag Vijay

AGP for Respondents-State: Ms. P. J. Bharad

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CORAM : R. M. JOSHI, J.

Dated : July 29, 2024

PER COURT :-

1. By consent of both sides, petition is heard finally at admission stage.

2. This petition takes exception to the order dated 07/09/2022 passed by learned Member Industrial Court, Ahmednagar in Complaint ULP No.53/2019 whereby the prayer of the petitioners for grant of pension is rejected.

3. 'Sarv Shramik Sangh', a registered Trade Union representing the present petitioners, filed Complaint ULP No.270/1987. This complaint was decided by order dated 14/07/1992 and the same was allowed with following reliefs :-

"Order

The complaint is allowed as follows :

It is hereby declared that the respondents have indulged in unfair labour practices covered by Item No.6 of Schedule IV of the Act. They shall cease and desist from further indulging in these unfair labour practices.

It is further ordered that respondents should confirm and make permanent all those employees, in their posts, whose names find place in Annexure 'A' attached to complaint petition from Sr.Nos.1 to 8, 10 to 41, 42, 43, 45 and 46 (excepting employees at Sr.Nos.9, 41 and 44) on the date of filing of complaint i.e. 09/12/1987 with all attendant benefits.

The arrears to which employees become entitled to should be computed and paid to the employees within three months from the date of passing of this judgment and order i.e. from 14/07/1992.

The respondents are further directed to pay to each of the successful applicant-employee a sum of Rs.50=00 (Rupees fifty only) towards and by way of costs and bear their own costs."

4. Undisputedly this Judgment is challenged up to the Hon'ble Supreme court unsuccessfully. The order passed by the learned Industrial Court directing the respondents to confirm and make permanent all the employees in their respective posts has attained finality. Thereafter, the petitioners had filed Misc. Recovery ULP No.01/2015 seeking direction to the respondent to pay other benefits attached to the employment. This complaint was also allowed by order dated 14/08/2018. Though this order is under challenge in Writ Petition No.13734/2018, pending before this Court, however undisputedly the amount directed to be paid to the petitioners by Industrial Court is

already disbursed to them by respondent. Further there is no stay to this order from this Court.

5. In the light of aforestated facts Complaint ULP No.53/2019 was filed before Industrial Court by the petitioners claiming that they are entitled to get pension as they are being directed to be made permanent by the Industrial Court. This complaint is dismissed by the Industrial Court on the ground that the pleadings of the complainant are vague and it is not mentioned as to when they retired from their service. It is also observed therein that for want of a mention in the Judgment passed in Misc. Recovery ULP No.01/2015 to the effect that complainants have rendered more than ten years of pensionable service, the complaint is not allowed. Relevant rules are referred to by the Industrial Court in order to observe that for the purpose of qualifying service to be eligible for pension, service of ten years is mandatory.

6. The learned Counsel for petitioners submits that the observations made by the Industrial Court while rejecting the complaint are not correct and they are contrary to the pleadings before it. Attention of this Court is drawn to the document annexed to the complaint which specifically discloses the period of service and date of retirement/ date

of death of concerned workman specifically. Thus, it is his submission that this finding recorded by the learned Industrial Court is not sustainable. He has also drawn attention of this Court to the observations made by the Industrial Court in Misc. Recovery ULP No.01/2015 wherein it is recorded that petitioner Narmadabai Fulari so also petitioner No.3 Ashabai Ramnath Shinde have completed ten years of service. It is thus his submission that once the basic requirement of ten years of service to be eligible for pension is fulfilled, there could not have been any order of dismissal of the complaint seeking the said direction.

7. Learned AGP opposed the said contention by relying upon the observation made by the Industrial Court in the impugned order. It is submitted that it was necessary for the complainants to prove that they have completed qualifying service to be eligible to receive pension. It is submitted that in absence of any pleadings to that effect and evidence on record, there is no reason or justification for causing interference in the impugned order.

8. There is no dispute about the fact that in the complaint (ULP) No.270/1987 filed by Sarv Shramik Sangh there was a direction of the Industrial Court to make the concerned employees permanent in the

service. This order undisputedly has attained finality being not interfered with up to the Hon'ble Supreme Court. Once this order has attained finality, the workmen covered by said complaint are treated as permanent in their respective posts. Petitioners were covered by the said order. The only question remains for determination for granting pension to these workmen is whether they have completed qualifying service of minimum ten years to become eligible for the same.

9. The finding recorded by the Industrial Court that there is no pleading of the complainant with regard to their term of employment does not reflect correct facts. Perusal of the complaint clearly shows that along with said complaint a letter was annexed which indicated specifically year of appointment of service of the petitioners and their age of retirement/ date of death of the concerned workman. Thus, it is not the case that there is no pleading or there is no material on record to substantiate the claim of the petitioners. Similarly the observations made by the Industrial Court in Misc. Recovery ULP No.01/2015 also shows that petitioner Nos.1 and 3 have put in 10 years service. Though there is a challenge to this order dated 14/08/2018 passed in Complaint Recovery ULP No.01/2015 however admittedly this order has not been stayed, on the contrary the same is already practically implemented by the respondent. Thus it can be said that petitioner No.1 Narmadabai

and petitioner No.3 Ashabai have completed minimum required service of 10 years to become eligible to receive pension. There is however no evidence to indicate that other petitioners have qualified to receive pensionary benefits. Having regard to these facts there is no justification for dismissal of the complaint against petitioner Nos.1 and 3.

10. However, since there is no evidence indicating eligibility of the other petitioners to be entitled to receive pension, dismissal of complaint against them deserves to be confirmed. Hence, case is made out to cause interference in the impugned Judgment.

11. Complaint ULP No.53/2019 stands allowed to the extent of petitioner Nos.1 and 3 as per prayer Clause 'A' which reads thus :-

“अ. जाब देणार यांनी तक्रारदाराबाबत तक्रारीत नमूद केलेल्या अनुचित कामगार प्रथांचा अवलंब केल्याचे जाहीर करून तक्रारदारांना निवृत्ती वेतन न देण्याची कृती बेकायदेशिर असल्याचे जाहीर करून त्या रद्द करण्याविषयक आदेश व्हावेत व येथून पुढे तक्रारदारांबाबत अनुचित कामगार प्रथांचा अवलंब न करण्याविषयक ताकीद जाब देणार यांना देण्यात यावी. ”

The order of dismissal of the complaint qua petitioner Nos.2, 4 and 5 is maintained.

12. Petition stands partly allowed in above terms.

(R. M. JOSHI, J.)

vj gawade/-.