

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1924 OF 2005

1. The Executive Engineer
2. The Deputy Engineer ...Petitioners

Versus

Dattu Vithoba Durgude ...Respondent

...

Mr. S.H. Kankal, *AGP for the Petitioners.*

Mr. Aditya Andhorikar with *Mr. Yogesh Birajdar i/b. Mr. S.D. Dharmadhikari for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 2 MAY 2024.

Oral Judgment:

1. By this petition, the State Government challenges Award dated 9 August 2004 passed by the Member, Industrial Court, Nashik by which the Complaint (U.L.P.) No.228 of 2000 filed by Respondent has been allowed and Petitioners are directed to grant to the Respondent post of Electrician from April 1990 alongwith benefits attached to that post from 1 January 2001.

2. By order dated 7 July 2005 this Court has admitted the Petition and has stayed the Judgment and Order of the Industrial Court dated 9 August 2004.

3. I have heard Mr. Kankal, the learned Additional Government Pleader for the Petitioners-State. He would submit that the order granting

Converted Regular Temporary Establishment (**C.R.T.E.**) benefit to the Respondent was passed on 18 July 1992, by which he was granted C.R.T.E benefit on the post of Helper w.e.f. 21 May 1990. That Respondent never protested about grant of C.R.T.E. benefit on the post of Helper and approached the Industrial Court in the year 2000 complaining about non-grant of C.R.T.E. benefit on the post of Electrician. He would submit that Respondent did not challenge the order dated 18 July 1992. That therefore, Industrial Court ought to have rejected the complaint on the ground of delay. That Petitioners have not committed any unfair labour practices as Respondent was granted C.R.T.E. benefit w.e.f. 21 May 1990. That Industrial Court itself has held in paragraph 4 of the order that Respondent was initially appointed as Helper. That C.R.T.E. benefit is to be granted only after completion of five years on a particular post. Therefore, the post held by the Respondent prior to 21 May 1990 would be the determinative factor. That Industrial Court erred in not framing the issue relating to the post on which Respondent was working. That therefore, the Industrial Court has erred in directing grant of post of Electrician to the Respondent w.e.f. April-1990. He would pray for setting aside the Judgment and Order dated 9 August 2004 passed by the Industrial Court.

4. *Per contra*, Mr. Andhorikar the learned counsel appearing for the Respondent-employee would oppose the petition and support the order passed by the Industrial Court. He would submit that though the initial appointment of Respondent was on the post of Helper, the evidence produced before the Industrial Court clearly indicated that he was consistently shown as Junior Electrician in the attendance-cum-wage

register of April 1990 to July 1990. That the Industrial Court has also considered correspondence placed on record which again shows his engagement on the post of Electrician. That despite working on the post of Junior Electrician, the Respondent was erroneously shown to have been put on C.R.T.E. basis by order dated 18 July 1992. He would further submit that the so-called delay in approaching the Industrial Court becomes meaningless in view of the fact that the Industrial Court has restricted financial benefits to be paid to the Respondent from 01 January 2001, though he is found entitled to be granted the post of Electrician from April 1990. That Respondent has already suffered loss on account of denial of wages on the post of Electrician from April-1990 to 31 December 2000. He would therefore submit that this Court may not interfere in the order of the Industrial Court in the absence of any perversity in the finding recorded by it. He would pray for dismissal of the petition.

5. Rival contentions of the parties now fall for my consideration.

6. The Industrial Court itself held in paragraph 4 of its judgment that there was no dispute about Respondent's initial engagement on the post of Helper. The Respondent did not contend that he worked as Electrician at the time of converting him to C.R.T.E. status. By order dated 18 July 1992 Petitioners granted C.R.T.E benefits to the Respondent on the post of Helper from 21 May 1990. Thus, the principal issue involved for the Industrial Court was about the exact post on which Respondent was working prior to grant of C.R.T.E. benefits. There is no dispute to the position that C.R.T.E. benefit under the Kalelkar Award is to be granted on the same post on which a person works continuously for

a period of five years. Therefore, engagement of Respondent on a particular post for a period of five years preceding to 21 May 1990 would determine his entitlement for C.R.T.E. benefit on that post.

7. According to the Petitioners, Respondent always worked as Helper prior to 21 May 1990 and that therefore he was converted to C.R.T.E. status on the post of Helper.

8. In the light of this position if Respondent contended that he worked as Junior Electrician, the Industrial Court ought to have formulated a specific issue about the exact post on which the Respondent was working. However, such issue was not framed. Be that as it may, after holding that the position of Respondent as Helper at the time of initial engagement remain undisputed, the Industrial Court looked into the records after April-1990 to find the exact post on which he was working. In my view, this exercise undertaken by the Industrial Court is clearly faulty. Respondent desired the post of Electrician from 21 May 1990, on which date he was given the post of Helper. In this connection, the prayers made by Respondent in his complaint read thus:-

- “a) declare that the respondents have committed the unfair labour practice as stated above.
- b) Direct the respondents to give promotional grade and monetary benefits to the complainant with effect from 21/5/90 or on any other date which may deem fit and proper and further pay the complainant the arrears of wages for the period he is performing the duties of wireman.
- c) Costs of the complaint be granted in favour of the complainant as against the respondents.
- d) Any other just and proper relief which the Hon.Court may deem fit and proper in the facts and circumstances

of the case in favour of the complainant as against the respondents.”

9. Thus, what Respondent desired was ‘promotional grade’ on account of performing the duties of Wireman. The said benefit was sought by him from 21 May 1990, which is the date from which he is granted C.R.T.E. benefit on the post of Helper. To determine Respondent’s entitlement to be treated as Electrician /Wireman from 21 May 1990, his status for preceding five years becomes relevant. Therefore, what Industrial Court ought to have done was to make an enquiry about Respondent’s duties prior to 21 May 1990. Instead of doing that, the Industrial Court misdirected itself by making an enquiry into the duties performed by Respondent and designation given to him after April 1990. In my view duties performed by Respondent or the designation given to him after April 1990 cannot decide his entitlement to be converted on C.R.T.E. basis on the post of Electrician as on 21 May 1990. Therefore, the entire enquiry conducted by the Industrial Court appears to be completely faulty.

10. What is relevant to be noted is the fact that after passing of order dated 18 July 1992 granting C.R.T.E. benefit to Respondent on the post of Helper from 21 May 1990, he thought of approaching the Industrial Court in the year 2000, i.e. after 8 long years, complaining about the post on which he was granted C.R.T.E. benefits. There is nothing on record to indicate that the Respondent ever protested about his conversion on the post of Helper immediately after passing of order dated 18 July 1992. It appears that he willingly accepted his conversion to C.R.T.E. on the post of Helper by order dated 18 July 1992. After 8 long

years, he approached Industrial Court complaining about the post on which C.R.T.E. benefit was granted to him. In such circumstances, Industrial Court ought not to have entertained the complaint filed by Respondent both on the grounds of delay as well as estoppel.

11. In my view therefore, the judgment and order passed by the learned Member, Industrial Court is indefensible. The Writ Petition accordingly succeeds. The Judgment and Order dated 9 August 2004 passed by the Member, Industrial Court, Nashik is set aside. The Writ Petition is allowed in above terms. Rule is made absolute.

[SANDEEP V. MARNE, J.]