IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 11223 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD THROUGH ITS CHAIRMAN
VERSUS
GAUTAM RAOSAHEB INGALE AND ANOTHER

AND
904 WRIT PETITION NO. 11225 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD
VERSUS
VIJAYKUMAR PANDITRAO SURYAWNASHI AND ANOTHER

AND
905 WRIT PETITION NO. 11234 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD
VERSUS
SUDARSHAN VISHNU TAMBE

AND
906 WRIT PETITION NO. 11235 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD
VERSUS
GUNWANT SAHEBRAO SHERKAR AND ANOTHER

AND
907 WRIT PETITION NO. 11236 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD
VERSUS
MAHADEV SITARAM GAIKWAD AND ANOTHER

AND
908 WRIT PETITION NO. 11237 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD
VERSUS
PANDIT BABURAO GUNDRE AND ANOTHER

AND
909 WRIT PETITION NO. 11262 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD
VERSUS
SANTOSH SHANKARRAO MORE AND ANOTHER

AND
910 WRIT PETITION NO. 11265 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD
VERSUS
RAM DASHRATH KADAM AND ANOTHER

AND
911 WRIT PETITION NO. 11274 OF 2024

MAHARASHTRA STATE ELECTRICITY BOARD STAFF CO OPERATIVE CREDIT SOCIETY LTD THROUGH ITS CHAIRMAN
VERSUS
AYUB BABUKHAN PATHAN AND ANOTHER

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- Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. V. S. Undre, Advocate for the Petitioners
- Mr. S. S. Jadhavar, Advocate for Respondent No. 1

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CORAM : R. M. JOSHI, J
DATE : MARCH 19, 2025

PER COURT :

1. These Petitions take exception to the judgment and order dated 07.08.2024 passed by the Industrial Court, Latur in Complaints ULP No. 107/2016 whereby

Industrial Court has granted following reliefs:

"1) Complaint is allowed with cost as under.

2) It is declared that respondents have indulged in unfair labour practices within the meaning of Item 6 and 9 of Sch. IV of M.R.T.U. and P.U.L.P. Act, 1971 and they are directed to cease and desist from the said act of unfair labour practice.

3) Respondents are directed to confer permanency on complainant on completion of 240 days in service from the date of his appointment i.e. 17.03.1996 and to release all the consequential benefits within two months.

4) Respondents are directed to make payment or arrears towards benefits of 5th & 6th Pay Commission, D.A. and H.R.A. as made applicable to the complainant within two months.

5) xxx"

2. At the outset, learned Senior Counsel appearing for the Petitioners, on instructions, makes statement that the Petitioners though have filed Petitions taking exception to the entire order, challenge to the impugned order is restricted to the extent of direction to make payment of arrears towards benefits of 5th and 6th pay commission. In view of the

said statement, challenge to the impugned order is restricted in these Petitions to that extent.

3. Parties are referred to as '**workmen**' and '**society**' for the sake of convenience.

Workmen filed complaint ULP No. 107/2016 under Section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short '**the Act**') read with Scheduled IV, item nos. 5, 6, 9 and 10 for seeking permanency on completion of 240 days of service and benefits of 5th and 6th pay commission with arrears and consequential reliefs. Workmen claim to be employed with society from their respective dates of appointments as mentioned in the complaint. It is claimed that they are doing permanent nature of work. It is the case of the workmen that society is involved in the business of lending money i.e., loan to the members and also accepts deposits from them. It is the case of the workmen that regulation rules are framed by the Society whereby as per the clause no. 6 workmen of the society are entitled for the dearness allowance and house rent allowance as declared by the Government of Maharashtra

from time to time. It is further averred in the complaint that after implementation of the 6th pay commission to the employees of the State Government all workmen made representation to the society for increase in their salary. Similarly claim was raised with regard to the 6th pay commission so also arrears of 5th pay commission. It is also claimed that workmen have worked for more than 240 days of continuous service and since they are performing regular nature of work, they are entitled for permanent status and permanency. With these averments, following reliefs are sought :

> "१. तक्रारदाराची तक्रार मंजूर करावी व सामनेवाला याने अनुचीत कामगार प्रथेचा अवलंब केला आहे असे जाहीर करून त्यास कायमचा प्रतिबंधात्मक आदेश सामनेवाला यांच्या विरूध्द व्हावा.
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> २. तक्रारदाराच्या सेवेला २४० दिवस झालेल्या तारखेपासून त्यास सेवेत कायम करून सेवानियमातील तरतूदीनुसार आणि महाराष्ट्र शासनाच्या कर्मचा-याप्रमाणे त्यास सहावा वेतन आयोग लागू करण्यासंबंधी तसेच पाचव्या व सहाव्या वेतन आयोगातील फरकातील रक्कम रू. ९१९४३२ व इतर सर्व आर्थिक लाभ मिळणेबाबत योग्य ते आदेश सामनेवाला यांच्या विरूध्द पारित करावेत.
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> ३. या तक्रारीचा खर्च रू. ५०००/- यांनी तक्रारदारास देण्याबाबत योग्य तो हुकूम करावा.
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> ४.या न्यायालयास योग्य वाटतील असे आदेश पारित करावेत.''

4. Society filed written statement denying the contentions of the Plaintiff however it is accepted that the workmen are working with the society as

claimed however it is denied that they were working continuously. It was the contention of the society that since society is registered under the Maharashtra Cooperative Societies Act, the Registrar under the said Act would be competent Authority to decide the issue and that the society is not covered by the provisions of Industrial dispute Act. Though it is accepted that the society is engaged in the business of receiving benefits and advancing loans to the members however it is denied that the workmen are working on permanent/perineal posts. It is further denied that the workmen are entitled for benefits of 6th pay commission or the arrears of 5th pay commission. It is also contended that in February, 1980 the society was formed with 181 members. Till 1985 the functioning of the Society was done in appropriate manner, however, later on Administrator was appointed. For the year 1985-1986 also Administrator was appointed who without following due process of law has made appointments of the workmen. It is also alleged that 4th pay commission was made applicable to the workmen in collusion with them. It is specifically contended that considering financial position of the society, it is not possible to extend

the benefits of pay commissions as sought by the workmen.

5. Learned Industrial Court after taking into consideration service rules of the society and more particularly, clause nos. 6, 24 and 25, has held that the workmen are entitled for benefits of 5th and 6th pay commission at par with the State Government employees. With these observations, impugned order came to be passed.

6. Though in the written statement before the Industrial Court various other issues are raised including the issue of maintainability of the complaints, non application of the provisions of Industrial Disputes Act, so also the workmen not performing the permanent nature of work and having not completed 240 days of continuous work, in view of the statement made by the learned Senior Counsel for the Petitioner on instructions, the challenge in these Petitions to the impugned order is restricted as indicated above. This Court, therefore, does not find it necessary to go into the other issues.

7. Learned Senior Counsel appearing for the Society submitted that the Industrial Court has committed serious error in interpreting rules 6, 22 and 25 applicable to the Society. He drew attention of the Court to the relevant rules in order to contend that what was entitled by the workmen of the Society was DA and HRA as declared by the Government of Maharashtra from time to time. Similarly, as per rule 24 traveling allowance and daily allowance also would be at par with the Government employees. He specifically referred to rule 25 in order to contend that it was only for the purpose of creation of cadres and pay scales, it was not decided to apply the pay scales as per the Government employees. According to him, there is specific statement to that effect. It is his submission that if at all salary was to be paid as per Government employees, there was no reason for specifying the cadres i.e., Manager, Senior Clerk, Junior Clerk, Peon, Driver, etc. It is his submission that the Industrial Court has misinterpreted the said rules. It is specifically argued that for the purpose of deciding the enhancement of the pay, it was incumbent on the part of the Industrial Court to take into consideration

the financial condition of the employer and in this case without going into the same, order came to be passed directing the application of 5th and 6th pay commission to the workmen of society. It is his submission that if said misinterpretation is permitted to be done and the society which is a private employer and not Government aided institute cannot sustain with the financial burden which would come with application of pay commissions as declared by the Government. In support of his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in case of ***Punjab State Cooperative Milk Producers Federation Limited and Another vs. Balbir Kumar Walia and Others, (2021) 8 SCC 784***.

8. Per contra, learned Counsel for Workmen vehemently supported the impugned order. In this regard, he has made reference to the resolution passed by the Society granting benefits of 6th pay commission but from 08.09.2005. It is his submission that once 5th pay commission is made applicable, the same is necessarily be made applicable from the date on which it came into effect i.e., 01.01.1996. It is his further

submission that the service rules are more sufficiently indicate about the applicability of the pay scale and salary of the workmen at par with the Government employees. He has placed reliance on the Resolution dated 29.07.2005 passed by the Society in respect of application of 4th and 5th pay commission to the workmen. Finally, it is his submission that if pay commission is not made applicable, the salary of the employees would be stagnant and that they are likely to be affected adversely.

9. The entire issue with regard to the applicability of 6th pay commission and entitlement of the arrears of 5th pay commission would depend upon the service rules applicable to the workmen of the Society. Perused the rules. At the outset, it needs to be mentioned that in the entire rules there is no rule indicating application of the same salary as paid to the State Government employees. If it was so, there was no reason to mention in rule 6 about HRA and DA to be made applicable as declared by the State Government from time to time. Similarly TA and daily allowance is also same to be paid at par with State Government

employees. Except for these four heads, there is no rule provided for the employees of the Society getting pay at par with the Government employees. If the rules intended to be made for Government pay scales applicable to the workmen, there was no need for introducing such specific heads for this purpose. Coming to rule 25, it is relevant to note that these rules were framed at the time of inception of the Society. Classification of the employees is done and for the purpose of deciding their pay scale at that stage, it was recorded that pay scale would be in following manner:

> "२५. सेवा प्रवेश नियम - कर्मचा-यांचे खालीलप्रमाणे वर्गीकरण श्रेणी राहतील.
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> १. मॅनेजर / व्यवस्थापक १
> २. वरीष्ठ लिपीक १
> ३. कनिष्ट लिपीक ९
> पैकी मराठी इंग्रती टायपीस्ट दोन
> ४. शिपाई/डिलेव्हरी बॉय ४
> ५. वाहन चालक १
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> असा एकुण सोळा जागा राहतील, ज्यावेळी संस्थेचे व्यवहार वाढतील त्यावेळी व कार्यकारी मंडळाला आवश्यकता वाटल्यास जागा वाढवून किंवा रिकाम्या होणा-या जागेवर नेमणुका केल्या जातील अशा जागा भरण्याचा पूर्ण अधिकारी संस्थेच्या चेअरमनला राहील व त्यास जिल्हा उप-निबंधकाची पूर्व परवानगी आवश्यक आहे व महाराष्ट्र शासनाच्या कर्मचा-यांप्रमाणे खालील वेतनश्रेणी राहील.
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> १. मॅनेजर - १४००-४०-१६००-५०-२३०० ई.बी.-६०-२६००
> २. वरीष्ठ लिपीक - १२००-३०-१५६०- ई.बी.-४०-२०४०

३. कनिष्ठ लिपीक - ९५०-२०-११५०-इ.ओ.-२५-१५००
४. सेवक - ९५०-२०-११५०-इ.बी.-१४-९४०
५. वाहन चालक - ९५०-२०-११५०-इ.बी-२५-१५००

कॅश हॅंडल (हाताळणी) करणा-या कर्मचा-यास अलांउन्स दरमहा रू. ५०/- जादा देण्यात येईल.''

10. This indicates that the intention was to have some basis for classification as well as settling initial pay scales of the workmen. Clause no. 5 does not say that the pay scale of the workmen would be enhanced/altered as declared by the State Government from time to time. Absence of such specific provisions clearly shows that it was never intended to pay salary at par to the Government employees. The Industrial Court has totally misinterpreted the said rules, which has resulted into passing of the perverse order.

11. The law on the point of pay revision is absolutely settled to say that the financial position of the employer is most important and essential condition which is required to be taken into account by any Court while allowing the enhancement of the salary. Even while deciding the industrial dispute and by applying the principles of industry cum region, the

consideration of financial condition of the particular employer is paramount. The Industrial Court has totally failed to take into account the fact that the Society is private employer and not aided by the Government. In such circumstances, granting benefits of 5th and 6th pay commission as sought by the workmen would result into inability of the Society to take up such financial burden. Unless the Industrial Court had considered the financial position of the Society and when there was no unambiguous terms in the service condition of the workmen about applicability of the pay commissions declared by the Government, there remains no justification for passing any order like impugned order herein this case.

12. The Society, therefore, has not committed any unfair labour practices by not paying the arrears of 5th pay commission and by not making applicable benefits of 6th pay commission to the workmen. Since no unfair labour practice is committed in this regard, question of directing Society to desist the same does not arise. Consequentially, the order of directing benefits of 5th pay commission and 6th pay commission cannot

sustain.

13. As far as the apprehension/grievance made by the Counsel for the workmen about the stagnant in the salary of the workmen is concerned, it is open for the workmen to raise their charter of demand and in accordance with provision of the Industrial Disputes Act, these issues can be raised before appropriate authorities and if required finally before the Industrial Tribunal. In such circumstances, the workmen are not remediless as sought to be canvassed.

14. Hence, even though this Court has caused interference in the impugned order to above extent, the right of the workmen to raise charter of demand and to pursue the same would not get affected in any manner whatsoever.

15. As a result of above discussion, Petitions stand partly allowed. Order dated 07.08.2024 passed by the Industrial Court to the extent of grant of 5th and 6th pay commission in clause no. 4 of the said order stands set aside.

(R. M. JOSHI, J.)