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

WRIT PETITION NO. 1351 OF 1997

- 1 The Chief Executive Officer,
Zilla Parishad, Beed.
- 2 Deputy Engineer, Zilla Parishad,
Minor Irrigation Division, Patoda,
Tq.Patoda, Dist.Beed.

..PETITIONERS

-VERSUS-

Sheshrao Rambhau Khakare,
Age : Major, Occ : Service,
R/o Patoda, Tal.Patoda,
Dist.Beed.

..RESPONDENT

**WITH
WRIT PETITION NO.1701 OF 1997**

- 1 The Chief Executive Officer,
Zilla Parishad, Beed.
- 2 Deputy Engineer, Zilla Parishad,
Minor Irrigation Division, Patoda,
Tq.Patoda, Dist.Beed.

..PETITIONERS

-VERSUS-

Ganpat R. Tambe,
Age : Major, Occ : Service,
R/o Patoda, Tal.Patoda,
Dist.Beed.

..RESPONDENT

...

Mr.Prashant P. Dama, Advocate for Petitioners.

Mr.V.J.Dixit, Senior Advocate a/w Mr.Suryawanshi Kamlakar J., for the Respondents..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd July, 2015

Oral Judgment:

1 Both these petitions have been admitted by order dated 03.11.1997. By way of interim relief, the effect and operation of the impugned judgment of the Industrial Court dated 29.11.1994 was stayed.

2 Both the Respondents, namely, Sheshrao Rambhau Khakare in the first petition and Ganpat R. Tambe in the second petition, were continued in employment. Sheshrao Khakare retired on 31.08.2002 and Ganpat Tambe retired on 30.04.2002.

3 I have heard Shri Dama, learned Advocate for the Petitioners, who has strenuously attempted to assail the impugned judgment. I have also heard Shri Dixit, learned Senior Advocate appearing for the Respondents, who has supported the impugned judgment and prayed for dismissal of these petitions.

4 The controversy raised in these two petitions turns upon the judgment and order dated 22.04.1987 delivered by the Industrial Court in Complaint (ULP) No.228/1985, which was filed on behalf of these two Respondents and some other employees through their Union. The said judgment was challenged in this Court and it is informed that this Court has dismissed the petition filed by the Petitioners.

5 An agreement between the Marathwada Zilla Parishad Kamgar Union and the Chief Executive Officer, Zilla Parishad, Beed was arrived at with the intervention of Shri B.M.Maruf on 10.08.1970. The said agreement ever since has been commonly known and referred to as the “Maruf Settlement”. By the said settlement, the workers, who were working in the Maintenance Department of road, canal and building, were granted the pay scale w.e.f. 01.04.1970. Those employees who were not covered in categories A-1 to A-3 were given the pay scales as per the notification published in the Maharashtra Government Gazette part 48 dated 03.07.1969.

6 It is not in dispute that the revised pay scales, as were revised from time to time by the Government or by the Zilla Parishad, were made applicable to the employees of the Zilla Parishad. In the cases of differences or discrepancies the employees were paid the pay scales

applicable to the employees working in the Building & Construction Department. The dearness allowance for these employees was also declared by the Government from time to time. The settlement also fixed the terms of gratuity payable to such employees.

7 The Complainant Union had come up with the case that the Zilla Parishad, Beed had issued the notice dated 31.10.1980 seeking termination of the Maruf Settlement. After receiving the notice on 08.11.1980, the Union submitted its fresh charter of demands on 01.01.1981. After the notice of termination of the Maruf Settlement was issued, the Zilla Parishad started paying the wages on daily rates.

8 The dispute reached the Industrial Court through Complaint (ULP) No.228/1985. The Industrial Court by its judgment and order dated 22.04.1987 issued the following directions:-

- “1. It is hereby declared that the respondent has committed an unfair labour practice under Item No.9 of Sch.IV of the MRTU & PULP Act, 1971.
2. The respondent is further directed to cease and desist from committing such unfair labour practice.
3. The respondent is also directed to continue to give the benefits of Maruf Settlement dt.18.08.1970 until a fresh settlement or award takes place.
4. This order shall take effect after one month from today.
5. No order as to costs.”

9 It is no longer res-integra that any settlement under Section 2(p) r/w Section 18(1) or Section 18(3) of the Industrial Disputes Act, 1947, is to be succeeded by a new settlement upon conclusion of its tenure. The terms of the outgoing settlement continue to apply and the service conditions with long term benefits flowing from the said settlement continue to be available and applicable to those covered by the settlement until it is succeeded by a new settlement.

10 The Industrial Court by its judgment, operative part of which is reproduced as above, therefore, rightly directed that the Petitioners herein shall continue to extend the benefits of the Maruf Settlement to the workers covered till it is succeeded by a fresh settlement or award. Challenge to this judgment at the behest of the Petitioners has been turned down by this Court.

11 In the above stated back drop, these two workers along with few others gave an option of taking benefits under the Kalelkar award and not under the Maruf settlement. It is on the basis of this development that the Employer issued an order dated 03.07.1990 giving retrospective effect from 01.04.1984. However, by an order dated 11.04.1991 the Respondents were reverted from the post of “Mistri” to the post of “Watchman”. This was also given retrospective effect and the Employer

which is the Petitioner herein, issued the directions for deducting the difference in salary/ wages paid to the Respondents as per the reversion order dated 11.04.1991. This order of reversion was challenged by the Respondents in Complaint (ULP) Nos.157/1991 and 156/1991 respectively.

12 By a common judgment dated 29.11.1994 impugned in these two petitions, both the complaints were allowed and the Industrial Court issued the following directions:-

“Complaints allowed.

It is declared that the Respondents have engaged in unfair labour practices under Items 5, 9 of Sch.IV of the MRTU & PULP act, 1971.

The Respondents are directed to treat the order dt.11.04.1991 as cancelled and to revive the order dt.03.07.90 giving the promotion to both the Complainants Shri Sheshrao Rambhau Khakare (Complainant in ULP 156) and Shri Ganpat R. Tambe (Complainant in ULP 157) as Mistri Grade-I according to this order, with all the benefits thereunder.”

13 Shri Dama has strenuously contended that the promotion order dated 03.07.1990 is admitted, but it was claimed to be an outcome of an error on the part of the Petitioners. It was mistake which was sought to be rectified. After the Industrial Court decided Complaint (ULP) No.228/1985 on 22.04.1987, the benefits of the Maruf Settlement were

made applicable to the Respondents. This Court by its order dated 02.03.1990 confirmed the judgment of the Industrial Court and dismissed the petition filed by the Petitioner. The Respondents exercised an option on 29.09.1990 seeking applicability of the Kalelkar Settlement. This was done by suppressing the fact about the decision of the Industrial Court and this Court. Because the Industrial Court has decided the complaint on 22.04.1987, the Maruf Settlement alone would become applicable to the Respondents and the Respondents cannot seek benefits under any other settlement.

14 Shri Dama further submits that the Petitioners relied upon the option exercised by the Respondents and erroneously passed an order which was sought to be rectified by the order impugned in the complaints.

15 Shri Dixit, learned Senior Advocate specifically indicates from paragraphs 5 and 6 of the impugned judgment that the Industrial Court considered the evidence before it and has, accordingly, concluded that the order of reversion was unsustainable.

16 Shri Dixit points out the issues framed by the Industrial Court which read as under:-

“1. Does complainants prove unfair labour practices

as allegedly committed by the respondents?

YES

2. *Whether the complainant is entitled to the declaration sought?*

YES

3. *Whether the complainant is entitled to the reliefs sought?*

YES”

17 Shri Dixit submits that the Respondents had invoked Item No.9 of Schedule IV of the MRTU & PULP Act, 1971 in the body of the complaint. The order of reversion was passed without calling for any explanation from the Respondents. The Petitioners tried to justify the order by passing it off as a step towards rectification. No evidence has been placed on record to indicate that the Respondents could not have exercised the option of giving up the Maruf Settlement and opt for the Kalelkar Settlement.

18 Shri Dixit further indicates from the conclusions of the Industrial Court that the witness of the Petitioners had admitted that the option for choosing either the Kalelkar or the Maruf Settlement was left to the individual workers as the workers were not classified. The options were sought voluntarily and the Respondents had exercised their options voluntarily. He, therefore, submits that justifiable grounds supporting the impugned order of reversion were not brought before the Industrial Court. The Respondents succeeded in proving that the Petitioners had failed to

comply with the Kalelkar Settlement and the order of reversion was passed unilaterally.

19 It is clear from the fact situation recorded as above that the Petitioner itself had conceded that the Respondents herein were given the liberty to exercise an option in between the two settlements available. The option in favour of the Kalelkar Settlement was exercised. The order of reversion was passed under the belief that there was an error committed by the Petitioners which could not be established before the Industrial Court.

20 The Apex Court, in the matter of *Syed Yakoob v/s K.S.Radhakrishnan* reported in **AIR 1964 SC 477**, has observed that this Court while exercising its writ and supervisory jurisdiction ought to come to a conclusion that the judgment under challenge is perverse and is likely to cause grave injustice to the Petitioner. Similar observations are found in the judgment of the Apex Court in the case of *Surya Dev Rai v/s Ram Chander Rai* reported in **AIR 2003 SC 3044**.

21 Keeping in view the supervisory jurisdiction of this Court and in the light of the fact that both the Respondents have superannuated in

2002, I do not find that the Petitioners have succeeded in pointing out an error or perversity in the conclusions of the Industrial Court. I am not convinced that the impugned judgment would cause grave injustice to the Petitioners.

22 In the light of the above, both these petitions are dismissed. Rule is discharged.

23 Needless to state, the retiral benefits, which according to Shri Dixit, have been withheld by the Petitioners on account of the pendency of these petitions and the interim order passed by this Court dated 03.11.1997, shall be paid by the Petitioners to the Respondents within a period of FOUR MONTHS from today, failing which the Respondents will be at liberty to take recourse to the appropriate provisions of law for recovery of the said amount.

(RAVINDRA V. GHUGE, J.)