

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3689 OF 2012

- 1 Vaidyakiya Karmachari Sanghatana,
Ahmednagar District,
Through its General Secretary,
Vilas S/o. Bhikulal Mundada,
Age : 50 years, Occu. Nil,
R/o. Kolhar, Tq. Rahata.
District - Ahmednagar.
- 2 Kamal Laxman Mahagade,
Age : 35 years, Nil,
- 3 Kusumbai W/o. Daulatrao Bansode,
Age : 40 years, Nil,
- 4 Sudam S/o. Dnyandeo Bhalging,
Age : 46 years, Occu. Nil,
- 5 Kailash S/o. Vinayak Bramhane,
Age : 45 years, Occu. Service.
R/o. Hanumantgaon, Tq. Shrirampur,
District - Ahmednagar.
- 6 Jijabai W/o. Tukaram Waghchaure,
Age : 35 years, Occu. Nil,
- 7 Arvind S/o. Sakharam Londhe,
Age : 38 years, Occu. Nil,
- 8 Dagadu S/o. Chandrabhan Thorat,
Age : 37 years, Occu. Nil,
- 9 Laxman S/o. Baburao More,
Age : 40 years, Occu. Service,
R/o. Lohagaon, Tq. Shrirampur,
District - Ahmednagar.
- 10 Ribeka Prabhakar Barshe,
Age : 35 years, Occu. Nil,
- 11 Hausabai W/o. Narayan Jadhav,
Age : 38 years, Occu. Nil,

- 12 Mathura W/o. Laxman Sirsath,
Age : 40 years, Occu. Nil,
- 13 Ashok S/o. Navnath Talole,
Age : 40 years, Occu. Nil,
R/o. Aurangpura, Tq. Sangamner,
District - Ahmednagar.
- 14 Vishwanath S/o. Shankar Shelke,
Age : 42 years, Occu. Nil,
R/o. Aadgaon, Tq. Shrirampur,
District - Ahmednagar.
- 15 Balasaheb S/o. Bhausahab Shelar,
Age : 40 years, Occu. Nil,
- 16 Kamal Yosef Thombre,
Age : 35 years, Occu. Nil,
- 17 Shivaji S/o. Somaji Kadam,
Age : 38 years, Occu. Service,
R/o. Pathare, Tq. Shrirampur,
District - Ahmednagar.
- 18 Namdeo S/o. Baburao Korde,
Age : 40 years, Occu. Nil,
R/o. Loni, Tq. Shrirampur,
District - Ahmednagar.
- 19 Ashok S/o. Dada Bramhane,
Age : 42 years, Occu. Service,
R/o. Pathare, Tq. Shrirampur,
District - Ahmednagar.
- 20 Popat S/o. Gulabrao Nehe,
Age : 40 years, Occu. Nil,
- 21 Laxmibai W/o. Machindra Kamble,
Age : 38 years, Occu. Nil,
- 22 Ratanbai W/o. Prabhakar Kolage,
Age : 37 years, Occu. Service.
- 23 Bhausahab S/o. Sukhdeo Shinde,
Age : 40 years, Occu. Nil,
R/o. Songaon, Tq. Rahuri,
District - Ahmednagar.

- 24 Radhakrushna S/o. Kerunath Rokade,
Age : 40 years, Occu. Nil,
R/o. Durgapur, Tq. Shrirampur,
District - Ahmednagar.

Rest of the all petitioners
R/o. Loni, Tq. Shrirampur,
District - Ahmednagar.

...Petitioners.

Versus

- 1 Pravara Medical Trust,
At & Post - Pravaranagar, (Loni) Rahata,
Tq. Rahata, Dist. Ahmednagar.
Through its General Secretary,
Rajendra S/o. Eknathrao Vikhe,
Age : 52 years, Occu. Trustee,
R/o. Loni, Tq - Rahata.
District - Ahmednagar.
- 2 Shri Eknath @ Balasaheb Vitthalrao Vikhe,
Age : 65 years, Occu. Managing Trustee,
P.M.T., R/o. Loni, Tq - Rahata.
District - Ahmednagar.
- 3 Punjaji S/o. Bapuji Kadu,
Age : 65 years, Occu. Vice Chairman,
P.M.T., R/o. Satral, Tq. Rahuri,
District - Ahmednagar.
- 4 Ashok S/o. Eknathrao Vikhe,
Age : 60 years, Occu. Joint Managing
Trustee And Chief Executive, P.M.T.
R/o. Vikhe Patil Memorial School,
Opp - Senapati Bapat Road,
Near Pathrekar Nagar,
Pune - 411016.
- 5 Nanasaheb S/o. Sarangdhar Mhaske,
Age : 59 years, Occu. Trustee, P.M.T.,
R/o. Vitthal Prabha Housing Society,
Near Pravara Sahakari Bank,
Head Office, Hasanapur Road, Loni,
Tq - Rahata, Dist. Ahmednagar.
- 6 Chandrabhan Bhausahab Ghogare
(Deceased)

- 7 Radhakrushna S/o. Eknathrao Vikhe,
Age : 60 years, Occu. Trustee, P.M.T.,
R/o. Loni, Tq. Rahata,
District - Ahmednagar.
- 8 Murlidhar S/o. Mhalu Kulate,
Age : 55 years, Occu. Trustee, P.M.T.,
R/o. President, Krushi Vidnyan Kendra,
Babhleshwar, Tq. Rahata,
District - Ahmednagar.
- 9 Chandrakant B. Purandare,
Age : 60 years, Occu. Trustee, P.M.T.,
R/o. 31 -C, Dr. A.N. Purandare Road,
Girgaon Chaupati, Mumbai.
- 10 Subhash S/o. Sharad Agashe,
Age : 52 years, Occu. Trustee, P.M.T.,
R/o. Accident Hospital, Near by Canal,
At Post - Taluka - Shrirampur,
District - Ahmednagar.
- 11 Dilip. P. Patil,
Age : 50 years, Occu. Trustee, P.M.T.,
R/o Senapati Bapat Road,
Near Pathrekar Nagar,
Pune - 411016.(Deleted)
- 12 Dr. Vasantrao S/o. Yashwantrao Kawade,
Age : 48 years, Trustee and Medical
Director, R/o. Shree Clinic,
F.G. Suyojeet Sankul Road,
Nashik.

..Respondents

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Advocate for Petitioners : Shri L.V.Sangit
 Advocate for Respondent 1 : Shri Hon V.D. Sr. Adv. i/b Shri Hon A.V.
 Respondent 6 : Deceased,
 Respondent 11 : Deleted.

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CORAM : RAVINDRA V. GHUGE, J.
 Dated: October 21, 2015

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ORAL JUDGMENT :-

1. The petitioners are aggrieved by the judgment and order dated

12.12.2001, delivered by the Industrial Court in Complaint (ULP) No.312 of 1996.

2. The petitioners had preferred the above said Complaint before the Industrial Court through the Union as well as in their individual capacity. Registration Number of the Union was declared to be NSK / A/548 and the date of registration was stated to be 7.8.1996.

3. Through the Complaint, the complainants had prayed for difference / short fall in minimum wages, HRA and minimum wages as is payable to those who are in employment. By a notification dated 13.3.1998 issued by the competent authority under the Minimum Wages Act, 1948, “hospital industry” was declared to be a “scheduled employment”. Shri Sangeet points out from three paragraphs set out in the said notification that the order passed by this Court in Writ Petition Nos.1303 of 1985 and 1969 of 1985 dated 15.9.1987 was complied with by the issuance of the said notification.

4. It is, therefore, submitted that by virtue of the notification dated 14.3.1988, the petitioners are entitled to the reliefs put forth in their complaint filed on 25.9.1996. Shri Sangeet submits that the Industrial Court needs to consider the said notification while adjudicating upon this complaint.

5. He further points out that though there were 143 complainants / employees along with their Union before the Industrial Court, the complaint was not entertained on the ground that seven employees had left service, 12 employees had retired, 4 employees had resigned, 3 employees had passed away, 88 employees had withdrawn from the complaint and 19 employees were terminated. He further points out that the Industrial Court concluded that very few employees in the complaint are prosecuting the complaint and only 4 employees have pressed for the reliefs set out in the complaint.

6. He further points out that the complaint was not entertained for yet another reason. Since this Court had delivered its judgment on 15.9.1987 in the two petitions referred to above, the Industrial Court was of the opinion that the petitioners / complainants should have preferred Contempt of Court proceedings for the redressal of their grievance.

7. Shri Hon, the learned Sr. Advocate representing the respondents submits that the Industrial Court has rightly refused to entertain the Complaint because very few complainants were prosecuting the same. As this Court had delivered its judgment dated 15.9.1987, the Industrial Court has rightly observed that they should prefer contempt proceedings rather than filing the complaint.

8. He further submits that each of the complainants was required to

step into the witness box and since only two workers deposed on behalf of all the complainants, the Industrial Court rightly dismissed the complaint.

9. He further submits that the complainants were claiming reliefs from 1988 onwards and there was no prayer for condonation of delay. The Industrial Court, therefore, rightly dismissed the complaint. Hence, he prays for the dismissal of this petition.

10. I have considered the submissions of the learned Advocates as have been recorded herein above and have gone through the record available with their assistance.

11. I find that the Industrial Court had misdirected itself. Merely because some of the complainants have retired or resigned or left employment or were terminated or have died, cannot be a ground for the Industrial Court to abdicate its jurisdiction.

12. Issue involved in the complaint was with regard to difference / shortfall in payments in the light of the Minimum Wages Act applicable and the HRA which is prescribed under the Maharashtra Minimum House Rent Allowance Act, which is about 5% of the basic and dearness allowance.

13. Even if a complainant has retired or has severed employee - employer relationship in any of the above mentioned forms, the claim is not

put to rest. Such employee is still entitled to the difference in the payments made in comparison to the minimum wages prescribed. As such, rejection of the complaint on this ground is an unsustainable conclusion.

14. The three paragraphs referred to above in the Notification dated 14.3.1988 read as under:-

“ And whereas, the Government, after considering the report of the said committee had revised and fixed the minimum rates of wages in respect of employees employed in the said Schedule employment in the entire State of Maharashtra by Government Notification, Industries, Energy and Labour Department, No. MWA-5284/5751/Lab-7, dated the 29th January, 1985 (hereinafter referred to as "the said notification" issued under clause (b) of sub-section (1) of section 3 read with sub-section (2) of section 5 of the said Act;

And whereas, the High Court of Bombay in Writ Petition Nos.1303 of 1985 and 1969 of 1985 on 15th September,1987, has quashed and set aside the said notification and directed to revise the rates of the minimum wages after taking into account the increase in the Consumer Price Index between the date on which the said Committee made its report and the date upon which it issues the fresh notification and also directed that the special allowance shall be fixed upon the basis that the neutralization shall not at any point of time exceed 100 per cent;

Now, therefor, in exercise of powers conferred by clauses (a) and (b) of sub-section (1) of section 3 read with sub-section (2) of section 5 of the said Act, in its application to the State of

Maharashtra, and in supersession of the said notification the Government of Maharashtra after considering the advice of the said Committee and taking into account the order passed on the 15th September, 1987 by the High Court, Bombay in the said Writ Petition Nos. 1303 of 1985 and 1699 of 1985, hereby revises and fixes, with effect from 14th March, 1988, the minimum rates of wages in respect of the employees employed in the said Scheduled employment; consisting of”

15. It is not in dispute that the judgment of this Court has led to the inclusion of the “hospital industry” as a “scheduled employment” under the Minimum Wages Act. That does not mean that any employee, who is aggrieved by the action of the employer in not paying minimum wages should file a contempt of court proceeding against the said employer. This conclusion of the Industrial Court is surprising. Rejection of the complaint on this ground is, therefore, unsustainable.

16. It is an admitted position that the petitioner No.1 is not a recognized Union. The claim put forth in the complaint is not necessarily required to be espoused by a recognized Union. The petitioner No.1 has disclosed its registration number, which could have been verified by the Industrial Court.

17. Notwithstanding the above, individual workmen were before the Industrial Court in the complaint. They cannot be precluded from prosecuting the complaint. Those who have sought deletion from the complaint before the Industrial Court are obviously not to be considered

while adjudicating upon the complaint.

18. In the light of the above, I am of the view that the impugned judgment of the Industrial Court is rendered perverse and erroneous. The said judgment dated 12.12.2011 is, therefore, quashed and set aside and this petition is partly allowed.

19. Complaint (ULP) No. 312 of 1996 is, therefore, remitted to the Industrial Court for fresh adjudication on the following conditions:-

(A) Those complainants, who are petitioners before this Court as well as the Union can espouse the cause of its members before the Industrial Court.

(B) These petitioners as well as the respondent / management shall be at liberty to adduce additional oral and documentary evidence.

(C) The Industrial Court shall not discard the evidence recorded earlier to the extent of these petitioners.

(D) The notification dated 14.3.1988 shall be kept in focus by the Industrial Court.

(E) The claim for minimum wages and HRA shall be looked into by the Industrial Court in the light of the law applicable.

(F) All contentions of the petitioners and respondents herein are kept open.

(G) The litigating sides shall appear before the Industrial Court on 16.11.2015 and formal notices need not be issued by the Court.

(H) Considering the fact that the complaint has been instituted in 1996 and a recurring cause of action is involved, the Industrial Court shall decide the said complaint on its merits, as expeditiously as possible and preferably on/or before 30.4.2016.

20. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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