

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4559 OF 2010

Ahmednagar Mahanagar Palika
Kamgar Union through its
President Anant Dattatraya Lokhande,
Age 39 years, Occu. Social Work,
R/o. Sarmik, Tilak Road,
Ahmednagar

...Petitioner...

Versus

Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Commissioner.

...Respondent...

WITH

WRIT PETITION NO. 4560 OF 2010

Ahmednagar Mahanagar Palika
Kamgar Union through its
President Anant Dattatraya Lokhande,
Age 39 years, Occu. Social Work,
R/o. Sarmik, Tilak Road,
Ahmednagar.

...Petitioner...

Versus

Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Commissioner.

...Respondent...

**WITH
WRIT PETITION NO. 7051 OF 2010**

- 1 Smt. Sushila W/o. Vishwanath Jare
Age 65 years, Occu. Retired Employee
R/o. Municipal Colony, Chawl No.1
Ganesh Chowk, Ahmednagar.
- 2 Sudhakar S/o. Pandit Kulkarni
Age 66 years, Occu. Retired Employee
R/o. Room No. 293, Chawl No. 1.
Siddarth Nagar, Ahmednagar.
- 3 Baban S/o. Vithal Zinjurde
Age 64 years, Occu. Retired Employee
R/o. Opp. Jijamata High School
Ahmednagar.
- 4 Uttam S/o. Dashrath Gaikwad
Age 68 years Occu. Retired Employee
R/o. Opp. ITI, Jahagirdar Chawl
Ahmednagar.
- 5 Tarabai W/o. Dattu Sole
Age 62 yrs. Occu. Retired Employee
R/o. Kedgaon, Tq. & Dist. Ahmednagar.
- 6 Ramesh S/o. Vithal Rasal
Age 65 yrs. Occu. Retired Employee
R/o. Bagroja, Delhi Gate,
Hudco, Ahmednagar.
- 7 Ramesh S/o. Laxman Gawade
Age 65 yrs. Occu. Retired Employee
R/o. Shahunagar Kedgaon,
Tq. & Dist. Ahmednagar.
- 8 Manjabapu S/o. Keru Zine
Age 59 yrs. Occ. Retired Employee
R/o. Pimpalgaon Malvi,
Tq. & Dist. Ahmednagar

- 3 -

- 9 Chandrakant S/o. Tukaram Bhutkar
Age 68 yrs. Occu. Retired Employee
R/o. Ashtekar Wada, Delhi Gate
Ahmednagar.
- 10 Suadam S/o. Vithoba More
Age 66 yrs. Occu. Retired Employee
R/o. H.No. 1007, Ahilya Chowk
Bhingar, Tq.& Dist. Ahmednagar.
- 11 Dnyandeo S/o. Tukaram Zine
Age 58 yrs. Occu. Retired Employee
R/o. Pimpalgaon Malvi,
Tq. & Dist. Ahmednagar.
- 12 Eknath S/o. Ganpat Ajbe
Age 65 yrs. Occu. Retired Employee
R/o. Vaishnavnagar, Kedgaon
Tq. & Dist. Ahmednagar.
- 13 Appasaheb S/o. Vishnu Diwate
Age 65 yrs. Occu. Retired Employee
R/o. Bagroja Hudco, Delhi Gate
Ahmednagar.
- 14 Narsingh Babulal Padma
Age 63 yrs. Occu. Retired Employee
R/o. Zarekar Galli, Ahmednagar
- 15 Sachin S/o. Chaburao Sarode
Age 28 yrs. Occu. Nil
R/o. H. No. 25, Bagroja, HUDCO
Ahmednagar.
- 16 Bharat S/o. Madhukar Kadam
Age 32 yrs. Occu. Nil
R/o. Kedgaon, Tq. & Dist. Ahmednagar
- 17 Chandrakant S/o. Chaganlal Dalwale
Age 70 yrs. Occu. Retired Employee
R/o. 41/2, Municipal Colony
Siddarth Nagar, Ahmednagar

- 4 -

- 18 Smt. MunkeshBegum Mirsab Sayyad
Age 60 yrs. Occu. Retired Employee
R/o. Nasiman Colony, Mukund Nagar
Ahmednagar.
- 19 Mehmoob Akbar Mulani
Age 63 yrs. Occu. Retire Employee
R/o. Mulla Colony, New Mukund Nagar
Ahmednagar.
- 20 Dagdu S/o. Laxman Khandekar
Age 66 yrs. Occu. Retired Employee
R/o. Krushnakunj, Rasne Nagar
Ahmednagar.
- 21 Ghanshyam S/o. Shersing Chavan
Age 40 yrs. Occu. Retired Employee
R/o. R.No. 116, Chawl No.4
Municipal Colony, Ahmednagar
- 22 Baban S/o. Dattatraya Kashid
Age 32 yrs, occu. Retired Employee
R/o. Vanjarlane, Ahmednagar.
- 23 Ajay S/o. Bhimrao Jare
Age 33 yrs. Occu. Retired Employee
R/o. 959, Lonar Lane, Sarjepura,
Ahmednagar.
- 24 Anita Gajanan Darkunde
Age 38 yrs. Occu. Retired Employee
R/o. 62/3, Municipal Colony
Siddarth Nagar, Aurangabad. ...Petitioners...

Versus

The Ahmednagar Municipal Corporation
Ahmednagar – Through it's Municipal
Commissioner, Ahmednagar. ...Respondent...

.....

- 5 -

Shri P. V. Barde, Advocate for petitioner - Union.
Shri M. M. Patil (Beedkar) , Advocate for petitioners in
W.P. No.7051/2010.
Shri V. S. Bedre, Advocate for respondent - Municipal
Corporation.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 17.12.2015

ORAL JUDGMENT :

1] The first two petitions were admitted by this Court on 30.11.2010. The third petition was admitted and Rule was expedited on 6.9.2010.

2] The petitioner in the first two petitions is the Union, which had filed Complaint (ULP) Nos.83/2005 and 55/2005 before the Industrial Court at Ahmednagar. The petitioners in the third petition are the workers mentioned in Annexure A to Complaint (ULP) No.55/2005, which was filed by the Union.

3] In all these three petitions, the judgment of the Industrial Court dated 4.12.2009 by which both these complaints have been dismissed, has been challenged. Therefore, I have taken up these three petitions for hearing together.

4] For the sake of brevity and to avoid repetition,

- 6 -

the litigating sides in these matters shall be referred to as the employees and the employer – Corporation.

5] I have heard Shri M.M. Patil and Shri P.V. Barde, learned Advocates for the petitioner – Union and the employees; and Shri V.S. Bedre, learned Advocate appearing on behalf of Ahmednagar Municipal Corporation, which is a respondent in all these three matters, extensively.

6] Notwithstanding the lengthy submissions of the learned Advocates, a short point has been raised before this Court.

7] The petitioner – Union and the respondent – employer were party to an award delivered by the Industrial Court, Maharashtra, Pune, dated 30.3.1981 in Reference (IT) No.51/1979. All the Unions active in the respondent – Corporation – employer were parties to the said reference, which came up before the Industrial Court, Pune, vide the order of reference issued by the Deputy Commissioner of Labour, Pune, u/s 10(2) of the Industrial Disputes Act, 1947.

8] Clause No.6 of the said award dated 30.3.1981 (hereinafter referred to as the first award) is germane

- 7 -

to the cause of action before this Court. Same was also the issue before the Industrial Court.

9] It would be apposite to reproduce Clause 6 as was concluded by the Industrial Court in the first award as under:-

"6. Demand No.3 - Employment to the heirs of the employees - Employees in Class IV category, in all the departments, excepting Health Department, if they die before their retirement, if they become invalid, or if they retire, their heirs should be given appointment in their place. The Municipal Council agrees that the practice prevailing in the Health Department in this behalf, shall continue, as before. The Municipal Council agrees that in all other Departments, in case of Class IV employees, on their pre-mature death, invalidity or retirement, the heirs should be given appointments. In case of employees, other than Class IV employees, the Municipal Council agrees that the heirs should be given appointments as per educational qualification, in case of pre-mature death, invalidity or retirement and if the heirs do not possess the requisite educational qualification, they should be given appointment as per their qualification."

10] There is no dispute between the petitioner - employees and the respondent - employer that the first

award was to remain in force till it was succeeded by a settlement or award under the Industrial Disputes Act, 1947.

11] The employees contend that their father / mother, who was an employee of the respondent – Corporation retired from service on particular dates in 2001. Documents at page nos.37 and 38 are placed on record by way of specimen copies.

12] Shri Patil and Shri Barde submit that there is no dispute that the parents of the applicants or the petitioner – workers themselves, as in the third petition, retired from the services of the respondent – employer. Clause 6 Demand 3, as reproduced above under the first award, squarely applied to their cases for seeking compassionate appointment. Since such benefits were not extended to them, the Union preferred Complaint (ULP) Nos.55/2005 and 83/2005 before the Industrial Court under Items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

13] Contention was that if the parents of the applicants seeking compassionate appointment were covered

by Clause 6 of the first award, the act of the respondent – employer in keeping their claims pending for about 3 to 4 years cannot be countenanced. Similarly, the introduction of the second award dated 21.2.2005 delivered by the Industrial Tribunal in Reference (IT) Nos.2,1993, 3/1993 and 4/1993, cannot frustrate the rights of the petitioners.

14] It is further contended that the second award dated 21.2.2005, referred to above, was published on 11.4.2005. As per the scheme of Section 17 and 17-A of the Industrial Disputes Act, 1947 r/w the Industrial Disputes (Bombay) Rules, 1957, the said award would come into operation and would be executable only after the expiry of 30 days from the date of publication.

15] Shri Patil, therefore, submits that the second award, which was published on 11.4.2005 came into operation only on 11.5.2005. Both the complaints were filed before the Industrial Court on 29.4.2005 and 6.6.2005. The first complaint is apparently filed prior to the second award coming into operation.

16] It is further submitted that the Industrial Court has dismissed the complaint only on the ground that

- 10 -

because the second award came into operation, the complaints could not fall back upon Clause 6 of the first award, which was not in existence. It is submitted that the cause of action, which has resulted in a legal injury to the complainants, has to be considered on the basis of the law as it stood then. It is, therefore, prayed that these petitions be allowed.

17] Shri Bedre, learned Advocate, has not disputed the above-stated facts so far as the dates and events are concerned. He, however, submits that by Demand No.4 as decided by the Industrial Tribunal in the second award, Clause 6 under Demand No.3 in the first award was altered and as such the said clause was no longer available to the original complainants.

18] He points out the underlined portion, which is the conclusion of the Industrial Tribunal in the second award in relation to compassionate appointment to fortify his contention that compassionate appointment was to be made available to the legal heirs of the particular employees as per the directions of the Industrial Tribunal.

19] It would be apposite to reproduce the

conclusions (2nd award) of the Industrial Tribunal in relation to compassionate appointment, which read as under:-

"It will be just to direct the party No.1 to provide employment to the legal heirs of the employees of Class-IV category working in health department."

"It will be just to direct the party No.1 to provide employment to the legal heirs of employees of all categories i.e. Class-I to Class-IV on compassionate ground as per Government Resolutions & circulars at par with government employees."

"Hence, I am inclined to modify the demand and directing the party No.1 to provide (1) employment to the legal heirs of the employees of Class-IV category working in health department only (2) to provide the employment to the legal heirs of all categories i.e. Class-I category to Class-IV category on compassionate ground as per government Resolutions and Circulars at par with government employees."

20] Shri Bedre, therefore, submits that no fault can be found with the impugned judgment and hence these petitions deserve to be dismissed.

21] I find from the impugned judgment of the

Industrial Court that the issue as to when did the cause of action arise and whether the claim of the complainants fell under the first award, has not been considered by the Industrial Court while dismissing the complaints. It has only harped on the aspect that the first award was no longer in existence and was succeeded by the second award and hence the claims of the complainants based on the first award were unsustainable.

22] In my view, the Industrial Court should have gone into the aspect that the cause of action arose in and around 2001. The Corporation could have dealt with the applications for compassionate appointments based on the first award since the said award was in existence undisputedly till 10.5.2005. Whether the respondent – Corporation delayed a decision on the claims of the complainants as a consequence of which about 3 to 4 years had lapsed, thereby frustrating their claims, was also not considered by the Industrial Court.

23] In the peculiar facts of the case, as recorded above, ends of justice would have been met if the Industrial Court would have dealt with the aspects as regards the cause of action and whether the first award

was applicable when the claimants acquired the right to be enlisted for compassionate appointment. The Industrial Court should not have gone purely by the date of the second award and the dates of filing of the two complaints. In doing so, it has ignored the cause of action raised before it.

24] In the light of the above, the impugned judgment of the Industrial Court dated 4.12.2009 is quashed and set aside. Complaint (ULP) Nos.55/2005 and 83/2005 are remitted to the Industrial Tribunal for a fresh decision.

I am, therefore, issuing the following directions:-

[a] The litigating sides shall appear before the Industrial Court on 11.1.2016. Formal notices need not be issued by the Industrial Court.

[b] Both the sides are at liberty to lead additional oral and documentary evidence.

[c] The Industrial Tribunal shall take into account the oral and documentary evidence recorded earlier as well as freshly recorded and decide the complaints afresh.

[d] It is expected that the Industrial Tribunal

- 14 -

shall consider the claims of the complainants in the light of whether the first award or the second award will become applicable to such claims.

[e] the Industrial Tribunal shall not be influenced by its earlier observations in the impugned judgments, which have been quashed and set aside.

[f] the litigating sides shall cooperate with the Industrial Tribunal for the disposal of both the complaints as expeditiously as possible and preferably on or before 31.12.2016.

[g] All contentions of the litigating sides are kept open.

25] The petitions are, therefore, partly allowed and Rule is made partly absolute in the above terms with no order as to costs.

(RAVINDRA V. GHUGE, J.)