

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 868 OF 1997

1. The Maharashtra State Cooperative
Marketing Federation Limited,
H.O. Kanmoor House, Narsi Natha Street,
Bombay 400 009, through its
Managing Director.

2. The Maharashtra State Cooperative
Marketing Federation Limited,
Tarasing Market, 2nd Floor, Nanded
Through its District Marketing Officer.

..Petitioners

Versus

1. Damodhar Vinayk Rao Kale,
Age 35 years, Occ. Service
R/o C/o The Maharashtra State
Cooperative Marketing Federation Ltd.,
Tarasing Market, 2nd Floor, Nanded

2. Bhausaheb Chandrabhan Dandge
Age 30 years, Occ. Service
R/o as above.

..Respondents

WITH
WRIT PETITION NO. 2884 OF 1998

1. Damodhar Vinayk Rao Kale,
Age 44 years, Occ. Service
R/o C/o Kaulwar's house,
Gokunda, At post Tq. Kinwat,
District Nanded.

2. Bhausaheb Chandrabhan Dandge
Age 40 years, Occ. Service
R/o C/o District Marketing Office
Godown, Tq. Naigaon, Dist. Nanded.

..Petitioners

Versus

1. The Maharashtra State Cooperative
Marketing Federation Limited,
H.O. Kanmoor House, Narsi Natha Street,

Bombay 400 009, (Through its
Managing Director.

2. The Maharashtra State Cooperative
Marketing Federation Limited,
Through its District Marketing Officer.
Tarasing Market, 2nd Floor, Nanded

..Respondents

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Advocate for Petitioner : Shri D.N.Suryanwanshi
Advocate for Respondents : Shri Pradeep Shahane

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 17, 2016

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ORAL JUDGMENT :-

1. The petitioner establishment in the first petition is the respondent in the second petition. The respondent employees in the first petition are the petitioners in the second petition. Both the litigating sides have challenged the judgment of the Industrial Court dated 7.8.1996, delivered in Complaint (ULP) No.64 of 1994 (Old No. 115 of 1998). Both these employees have attained their age of superannuation, as they were 35 and 30 year's of age respectively in 1998.

2. This Court, while admitting the petitions on 15.7.1998, has stayed the impugned judgment.

3. I have considered the strenuous submissions of Shri Suryawanshi for the establishment and Shri Shahane for the

employees.

4. There is no dispute that the employees had filed the ULP Complaint claiming promotion as Clerks and for implementing the terms of the agreement signed in 1982 and which remained in force till 1988. A new settlement was signed in 1988 and which provided for filling of 30% vacancies by promotion. The employees had also claimed additional emolument for having temporarily worked as Depot Managers.

5. The establishment put forth a case before the Industrial Court that a recruitment drive was undertaken and the cases of these employees were considered for promotion. 31 employees, as like the employees in these cases, were invited for interviews, held on 24.9.1987. A written test was conducted which was followed by interviews. Both these complaints were not selected and it is thereafter, that they have filed their complaints in 1988. Though they were not selected, they were given additional responsibilities on temporary basis so that they would gather experience and could be again considered for promotion in future.

6. There is no dispute about the settlement being applicable from time to time. There is also no dispute that those workers, who were given additional responsibilities temporarily, were entitled for

additional emoluments as per the settlement.

7. On the basis of the oral and documentary evidence, the Industrial Court came to a conclusion that the select list of promotee candidates to the post of Clerks was prepared after conducting a written test and oral interviews. The employees did not challenge their non-selection before the Industrial Court. In my view, the Industrial Court, therefore, rightly concluded that the complainant employees have not discharged their burden by indicating as to who were the junior employees, who were promoted by showing undue favouritism and regardless of merits. The Industrial court, therefore, rightly rejected the claim of the employees claiming promotion on the ground that they have been superseded.

8. The other issue for adjudication raised in the complaint was as to whether these two employees were entitled for additional emoluments for having temporarily shouldered additional work responsibilities. On the basis of the evidence, the Industrial Court concluded that the establishment has admitted in the written statement as well as in cross-examination that the employees were given temporary charge as Godown Clerks or Depot Managers intermittently and they are entitled for additional emoluments as per the service conditions applicable.

9. With such findings arrived at on the basis of the oral and documentary evidence, I do not find any reason to brand such conclusions as being perverse.

10. Shri Suryawanshi has contended on the basis of the charts placed on record from pages 62 to 79 in the first petition that the additional emoluments have already been paid to these two employees and, therefore, the direction of the Industrial Court in the second paragraph of the impugned order deserves to be set aside.

11. I do not find that his submissions need to be entertained for the reason that the Industrial Court upon concluding that the two employees had worked on temporary basis as in-charge Clerks or Depot Managers, has held that, “ *The complainants are entitled to claim additional emoluments of the post held as in-charge from the date of their actual assumption of the charge till the date on which they had actually worked on this post.*” This takes care of the apprehension of the establishment since it is a presupposition that such payment has to be made if not already paid.

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

13. Needless to state, that the two employees namely, Damodhar

Vinayakarao Kale and Bhausahab Chandrabhan Dandge would be at liberty to submit their claims to the establishment after considering the documents at pages 62 to 79 in the first petition and identify the unpaid amounts to the establishment. If any amount is unpaid in the light of the directions of the Industrial Court, the same shall be paid by the establishment to the two employees, within eight weeks from the date of receiving their representation and with interest at the rate of 3% per annum from the date of the judgment of the Industrial Court.

(RAVINDRA V. GHUGE, J.)

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