

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4647 OF 2007

1. The Chief Executive Officer,
Zilla Parishad, Latur,
 2. The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Latur
- PETITIONERS

VERSUS

Nagnath S/o Baburao Solapure,
Age-61 years, Occu-Retired Driver,
R/o Samata Nagar, Udgir,
Dist.Latur

-- RESPONDENT

Mr.P.R.Tandale, Advocate for the petitioners.
Mr.A.B.Chalak h/f Mr.S.B.Talekar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/10/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and order dated 17/01/2007 delivered by the Industrial Court, Latur by which Complaint (ULP) No.1/2006 has been allowed and the petitioners are directed to pay retiral benefits as prayed for in prayer clause "C" of the complaint.

2. I have heard the strenuous submissions of the learned

Advocates and with their assistance, I have gone through the record available.

3. It appears from the submissions of the petitioners that the issue is with regard to the Kalelkar Settlement. The respondent was covered by the Maruf Award and pensionary benefits are not available under the said award. Pensionary benefits are available only under the Kalelkar settlement.

4. It is then submitted that the respondent had preferred Application (IDA) No.110/1982 which was decided by judgment dated 11/07/1986. The respondent had claimed u/s 33(C)(2) of the I.D.Act that benefits as regards pay scale under the Maruf Settlement were not extended to him.

5. I find that the Labour Court had recorded in its judgment dated 11/07/1986 in paragraph No.6 that the respondent was not eligible for being brought on Converted Regular Temporary Establishment (CRTE) as he had not completed 5 years in service.

6. It also appears that the respondent had filed an affidavit before the Labour Court on 03/09/1982 contending that he must get

benefits as per the Maruf Award.

7. Grievance of the petitioners is that the respondent has been granted retiral benefits as prayed for in the complaint and by allowing the complaint, the Industrial Court has granted benefits under the Kalelkar Settlement to the respondent, which is impermissible as he was covered by the Maruf Award.

8. A document dated 06/06/1983, which is an order issued by the Chief Executive Officer, Zilla Parishad, Latur is placed on record, which is marked as Exhibit "X" for identification. The said document makes a reference to the GR dated 10/07/1974. Exhibit "X" is an order by which the respondent as well as another co-worker namely A.S.Bharde have been brought on regular converted temporary establishment. So also, a document dated 16/07/1996 is placed on record which is also issued by the C.E.O. Zilla Parishad, Latur marked as Exhibit "Y" for identification. Exhibit "Y" indicates that the seniority list of the drivers in class III is settled under the Kalelkar settlement. The name of Mr.Bharde appears at Sr.No.9 and the respondent appears at Sr.No.18. A similar seniority list w.e.f. 01/04/1989 also indicates that the respondent was brought on CRTE as per the Kalelkar settlement.

9. The petitioner has placed before this Court a judgment delivered by the learned Division Bench of this Court dated 14/12/2001 in WP No.1896/1990 in the matter of Akhil Marathwada Zilla Parishad Kamgar Union Vs. The State to indicate that this Court has concluded that the Maruf Settlement was validly terminated by the Zilla Parishad, Nanded. It was also recorded that the Union as well as the Workman were called upon to give their options to be covered either by the Maruf Settlement or under the Kalelkar settlement. No document is cited by the petitioners which can be said to be a clear expression by the respondent of having opted for the Maruf Settlement benefits. The contention of the petitioners that his affidavit before the Labour Court dated 03/09/1982 should be taken as his expression of having opted for the Maruf settlement, is misplaced since filing of an affidavit before the Labour Court was not the manner of expressing an option, as was expected by the Division Bench of this Court.

10. Consequentially, Exhibit "X" and "Y" would therefore indicate that the petitioners have covered the respondent under the Kalelkar Settlement alongwith other co-workers Mr.Bharde and Ahmed Husain who were brought on converted temporary establishment by the same

order dated 06/06/1983. I, therefore, do not find that the Industrial Court has committed any error by delivering the impugned judgment.

11. Mr.Tandale, learned Advocate for the petitioners submits that the respondent has received gratuity under the Maruf Settlement, which is not available under the Kalelkar Settlement.

12. I do not find any merit in the said submission since the gratuity is to be paid under the Payment of Gratuity Act, 1972. As such, the fact that the respondent has received gratuity, is not indicative of the respondent having accepted the Maruf Settlement.

13. As such, this petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)