

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

WRIT PETITION NO. 11650 OF 2014

Ahmednagar Municipal Corporation,
Ahmednagar.
Through its Commissioner.

...PETITIONER

-VERSUS-

1 Kailash s/o Prabhakar Madke,
Age : 46 years, Occupation : Service,
R/o Plot No.34, Sonanagar,
Savedi, Ahmednagar.

2 The Collector, Ahmednagar.
Office of the Collector, Ahmednagar.

...RESPONDENTS

...
Advocate for Petitioner : Shri Bedre Vinayak Sudhakar.
Advocate for Respondent 1 : Shri Barde Parag Vijay.
AGP for Respondent 2 : Shri PG.Borade.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th July, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner/ Municipal Corporation is aggrieved by the
judgment and order dated 16.04.2014 delivered by the Industrial Court,

Ahmednagar by which Complaint (ULP) No.28/2011 filed by the Respondent/ Employee, has been allowed and the following directions in clauses (3) and (4) below paragraph 11 have been issued:-

- “(3) The respondents are directed to place the complainant in the grade pay of Rs.5500-9000 as an Assistant Librarian and pay the difference from 04.08.2004 or as applicable to the cadre No.3 by virtue of 6th pay commission.*
- (4) The respondents are also directed to promote to consider the complainant for promotion to cadre No.2 in the light of his qualification, experience and seniority and not to deprive him from promotion.”*

3 The undisputed factors emerging from the record and in the light of the submissions of the learned Advocates can be summarized as follows:-

- (a) The staffing pattern in the Municipal Council, which was subsequently converted into the Municipal Corporation, was determined by the award passed by the Industrial Tribunal in Reference (IT) No.51/1979.
- (b) The Respondent/ Employee was appointed as a Naka Karkoon in 1986.
- (c) Complaint (ULP) No.25/1988 seeking benefits of permanency was filed by the Respondent, which was allowed by the judgment dated 30.12.1994 delivered by the Industrial Court.

- (d) By order dated 18.05.1979, the Collector of Ahmednagar exercised his powers under Section 76 of the Maharashtra Municipalities Act, 1965 and accorded sanction for creation of posts under Resolution No.40 dated 30.06.1978.
- (e) As such, the Assistant Librarian post was created by the order dated 18.05.1979.
- (f) The post of Assistant Librarian and the Cashier were placed at par and the pay scale was prescribed as Rs.290-10-390-15-465-EB-15-540.
- (g) By order dated 04.08.2004 issued by the Commissioner of the Petitioner Municipal Corporation, the Respondent/ Employee, upon having acquired requisite qualification, was promoted as an Assistant Librarian in the pay scale of Rs.3200-85-4900/-.
- (h) For the first time, the Respondent/ Employee presented a representation on 29.09.2006 by which he voiced a grievance that despite having been placed in cadre-3 which also includes Cashier, Store Supervisor, Head of Establishment, Account Checker, Assistant to Head Clerk, etc., he has not been granted the pay scale of Rs.5500-9000/- which has been granted to all the cadre-3 employees who are working as Clerks.

- (i) The Industrial Court concluded that since the cadre-3 employees, who are treated at par, have been granted the pay scale of Rs.5500-9000/-, the Respondent/ Employee also needs to be granted the same pay scale and there are no circumstances justifying he being granted the pay scale of Rs.3200-4900/-.

4 I have gone through the impugned judgment in the light of the submissions of the learned Advocates. Insofar as the grant of relief by the Industrial Court w.e.f. 04.08.2004 is concerned, I am unable to sustain the said direction as regards the effect from 04.08.2004 since the Respondent/ Employee had accepted the said pay scale and had voiced his grievance for demanding the pay scale of Rs.5500-9000/- in cadre-3 for the first time on 29.09.2006.

5 Though Shri Bedre, learned Advocate for the Petitioner Municipal Corporation, has strenuously tried to indicate that the order of promotion issued to the Respondent/ Employee has sanctity and the same cannot be interfered with, I am unable to accept the said contention. It is apparent from the record of the Petitioner Municipal Corporation that the employees falling in a particular cadre are granted equal pay scales except a few exceptions in the form of doctors, medical officers and matrons,

who are said to be working in a different cadre though placed in cadre-3 and for which, their pay scale has been Rs.6500-10500/-.

6 When all the cadre-3 employees are treated alike and have been granted the same pay scale, by the order of promotion dated 04.08.2004, the Collector could not have created a new pay band for the class-3 cadre by introducing a lesser pay band only for the Respondent/ Employee. The Industrial Court has rightly allowed the complaint granting pay scale of Rs.5500-9000/- to the Respondent/ Employee and hence, consequential difference in wages.

7 Insofar as the direction in clause (4) reproduced above is concerned, I do not find any material before the Industrial Court to consider the grievance of the Respondent/ Complainant that he should be considered for promotion to Cadre-2 considering his qualification, experience and seniority. It is trite law that except in cases of proposed dismissal or termination, declaration of ULP under the MRTU & PULP Act, 1971 cannot be made purely on apprehension. The relief sought by the Respondent/ Employee towards promotion to cadre-2 is based on an apprehension that he is likely to be side tracked.

8 Considering the above, this Writ Petition is partly allowed and

the impugned judgment of the Industrial Court dated 16.04.2014 is modified to the extent of clauses (3) and (4) as under:-

- (a) The effect of clause (3) of the direction of the Industrial Court granting pay scale of Rs.5500-9000/- shall be made effective from 01.10.2006 and subsequent rise to the employees of cadre-3 by virtue of any pay commission, would be made applicable.
- (b) The direction at clause (4) stands set aside. Needless to state, in the event the Respondent has any cause of action as against factual deprivation of promotion to cadre-2, he would be at liberty to seek redressal of his grievance before the competent forum.

9 Rule is made partly absolute in the above terms.