

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

WRIT PETITION NO. 5509 OF 2014

Dr. Vijay Suklal Bagul and Others ..PETITIONERS

VERSUS

Municipal Corporation, Dhule ..RESPONDENT

....

Mr. P.S. Paranjape, Advocate for petitioners.

Mr. A.S. Sawant, Advocate for respondent.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 2nd MARCH, 2016

ORAL ORDER :

1. The petitioners are aggrieved by the impugned judgment dated 07.05.2014 delivered by the Industrial Court, Dhule by which Complaint ULP No. 87/2012 filed by the petitioners has been dismissed.

2. Mr. Paranjape, learned Counsel appearing on behalf of the petitioners has strenuously criticized the impugned judgment. He submits that once the Industrial Tribunal has arrived at a conclusion that the complaint was maintainable, it was required to

look into the aspect as to whether any service benefits made available to the petitioners in the form of non-practicing allowance, which was consistently being paid, could be withdrawn without following the due procedure.

3. Mr. Sawant, learned Counsel appearing on behalf of the respondent-municipal corporation has tried to justify the impugned judgment. He submits that the conclusion of the Industrial Court in so far as the status of the petitioners is concerned, in fact deserves to be challenged though, the corporation has yet not taken that decision.

4. He submits that these petitioners are registered practitioners who are in the employment of the respondent-corporation in its Health Department. They draw their monthly salary in between Rs.62,000/- to Rs.65,000/-. Their nature of duties are of a highly skilled character and cannot be equated with the clerical/manual or labour work being performed by the workmen. Mr. Sawant further submits that the work performed by

the petitioners cannot be said to be even clerical or of a managerial character.

5. I have considered the submissions of the learned Counsels.

6. It is evident that the monthly salary paid to these petitioners is about Rs.62,000/- or more. Their nature of duties is to medically treat patients. I am of the view that the medical practitioners, who are performing the work of medically treating their patients in the Health Department of the respondent-corporation, would not fall within the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 and within the definition of an employee under Section 3(5) of the M.R.T.U. & P.U.L.P. Act, 1971. Their complaint was in fact not maintainable before the Industrial Court.

7. At this juncture, Mr. Paranjape submits that rather than considering the merits of the matter, the petitioners seek leave to approach the learned Division Bench of this Court for redressal of their grievance which is limited to the extent of withdrawal of the

non-practicing allowance which was being paid to them earlier for a long time. It is further prayed that the impugned judgment of the Industrial Court would be an impediment in the path of resorting to such remedy. It is therefore prayed that liberty be granted to avail of the said remedy.

8. Mr. Sawant submits that it has always been the case of the respondent-corporation that these petitioners are not workmen. The Industrial Court has however erroneously concluded that they are workmen without considering the actual nature of duties that they perform and the salary of Rs.62,000/- per month that they draw.

9. He therefore prays that rather than remanding the matter for a rehearing on the issue as to whether the petitioners are workmen or not, this petition may be disposed off by granting liberty to the petitioners to approach the Division Bench of this Court. He however hastens to add that so far as the grievance of the petitioners is concerned, the respondent-corporation reserves its right to oppose all the contentions of the petitioners that may be

canvased before the learned Division Bench and oppose all prayers that may be put forth.

10. Since I have come to the conclusion that the petitioners are not workmen, the impugned judgment cannot be sustained. As such, the impugned judgment of the Industrial Court is set aside with regard to its conclusion that the petitioners are workmen. The Complaint ULP No. 87/2012 was therefore untenable before the Industrial Court. The same is therefore dismissed.

11. Needless to state, the petitioners are at liberty to resort to the remedy of approaching the learned Division Bench of this Court by filing a writ petition. The respondent shall be at liberty to oppose the petition which may be filed by the petitioners. All contentions are therefore kept open.

12. The writ petition is disposed off.

(RAVINDRA V. GHUGE, J.)