

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

WRIT PETITION NO. 9194 OF 2016

Rashtriya Vij Kamgar Sahakari
Patsanstha Limited,
Through its Chairman,
Plot No.24, Kohinoor Garden,
Maliwada, Ahmednagar.

...PETITIONER

-VERSUS-

Ashok Rambhau Khillare,
R/o Suvarnnagar, Kedgaon,
Tq. and Dist.Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri Sarvadnya Rohit S.
Advocate for Respondent : Shri Dnyaneshwar R Korde.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st September, 2016

Oral Judgment :

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

2 The Petitioner is aggrieved by the judgment and order dated 31.03.2016 by which Complaint (ULP) No.113/2012 has been allowed by the Industrial Court, Ahmednagar and the Petitioner is directed to give the

pay scale to the Respondent/ original Complainant, admissible to the post of a Peon during the period from 01.04.2008 to 02.12.2013 as per the recommendations of the Fifth Pay Commission on parity with the employees of the Maharashtra State Electricity Distribution Company Limited.

3 Shri Sarvadnya, learned Advocate for the Petitioner, has strenuously criticized the impugned judgment. The contention is that the Petitioner Society is a small scale establishment. It has only two employees on it's roll. It has a limited business. The members of the Petitioner Society are the employees of the Maharashtra State Electricity Distribution Company Limited, who are working in the areas falling under Ahmednagar district.

4 He further submits that the limited business of the Petitioner Society is of extending loan facilities to it's members by taking cash credit facility. It has meager profit margin. The Managing Committee supervises the day to day business activities of the Petitioner Society. The Petitioner draws the attention of the Court to the bye-laws of the Society and especially Annexure-A which prescribes the rules, duties and obligations of various Committees. He further points out that the nature of duties, disciplinary actions, payment of service benefits, pay fixation, loan

facilities, etc. are within the domain of the Managing Committee. As such, the claim of the Respondent before the Industrial Court was misconceived and therefore, the complaint deserved to be dismissed.

5 He further submits that the Respondent has a blemished past service record. He had obtained loan by taking undue advantage of he being employed with the Petitioner. He had admitted his guilt. His increment was stopped by way of punishment. The Payment of Gratuity Act is not applicable to the Petitioner Society since it engages only two employees.

6 Shri Korde, learned Advocate for the Respondent/ Employee, has defended the impugned order. The contention is that bye-law 1-16 has not been brought to the notice of this Court in it's entirety. Clause 5 below Part-II of the bye-laws at it's internal page 3, would indicate that the pay structuring and allowances of the employees of the Petitioner Society are identical to the Clerks and Peons working with the Maharashtra State Electricity Distribution Company Limited. The employees of the said Company working in Ahmednagar area have come together and formed the Petitioner Cooperative Society which is registered under the Maharashtra Cooperative Societies Act, 1960.

7 Shri Korde, therefore, submits that the Industrial Court has rightly placed reliance upon clause 5 by which the Petitioner has agreed to extend all service benefits identical to the Clerks and Peons working with the said Company. He then points out Part V of the bye-laws in which clause 29 makes the Payment of Gratuity Act applicable to the Respondent and covers the Petitioner Society. Once the Payment of Gratuity Act is made applicable through the bye-laws, the Petitioner cannot contend that the Payment of Gratuity Act is not applicable since only two employees are working with it.

8 I have considered the submissions of the learned Advocates as above.

9 The issue before the Industrial Court was only as regards parity in wages with comparable employees considering the fact that the Respondent was a Peon. The fifth pay commission is admittedly applicable to the Maharashtra State Electricity Distribution Company Limited. All the members of the Petitioner Society are employees of the said Company and are, therefore, entitled for salary benefits under the fifth pay commission. The bye-laws indicate that the Petitioner has adopted all such service conditions and pay structures as would be applicable to the employees of the Maharashtra State Electricity Distribution Company Limited so as to

be made applicable to the employees of the Petitioner Society.

10 Similarly, through the bye-laws the Petitioner Society has accepted the applicability of the Payment of Gratuity Act. These service conditions cannot be altered to the prejudice of the Respondent when he has been inducted in service based on such service conditions.

11 In the light of the above, I do not find that the Industrial Court has committed any error in allowing Complaint (ULP) No.113/2012 by the impugned judgment dated 31.03.2016. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)