

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6898 OF 2016

Johanwesley Sudarshanam Attigari,
Age-65 years, Occu-Retired,
R/o Ganesh Nagar, Nanded,
Tq. and Dist. Nanded -- PETITIONER

VERSUS

The Commissioner,
The Nanded Waghala Municipal Corporation,
Office at Nanded, Tq. and Dist. Nanded -- RESPONDENT

WITH
WRIT PETITION NO.6899 of 2016

Ananti S/o Sudarshanam Attigari,
Age-63 years, Occu-Retired,
R/o Near Sai Nagar, Compounder Colony,
Waghi Road, New Assapur, Nanded,
Tq. and Dist. Nanded -- PETITIONER

VERSUS

The Commissioner,
The Nanded Waghala Municipal Corporation,
Nanded, Tq. and Dist. Nanded -- RESPONDENT

Mr.Ashutosh Kulkarni h/f Mr.S.H.Panchal, Advocate for the
petitioners.
Mr.R.K.Ingole Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/11/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. Both the petitioners claim to be identically situated and have retired from the service of the same respondent/Municipal Corporation. Both of them have challenged the identical judgments delivered by the Industrial Court, Jalna dated 21/11/2015 in Complaint (ULP) No.35/2011 and 38/2011, only to the extent of the observations of the Industrial Court that the post and nature of work in between the “Pump Operator” and the “Pump Driver” are different and as a consequence of which the petitioners are not given the benefit of the revised pay scale payable to Pump Operators.

3. Mr.Kulkarni alongwith Mr.Panchal, learned Advocates for the petitioners have strenuously criticized the impugned judgments. It is contended that though the petitioners were appointed as Pump Operators, they have erroneously mentioned in their affidavit in lieu of examination in chief that they were working as Pump Drivers. At some places in the said affidavits Exhibit U-7 and U-6, respectively filed before the Industrial Court, the word “Pump Driver” has been used and that has led to the confusion. It is, therefore, submitted that the conclusion of the Industrial Court in paragraph No.9 of the impugned judgments is based on the confusion inadvertently created

by the petitioners and hence such conclusions are rendered perverse and erroneous.

4. Mr.Patil, learned Advocate appearing on behalf of the Corporation submits that both the petitioners have retired about 7 years prior to the filing of their individual complaints. Though they were appointed as Pump Operators, they actually worked as Pump Drivers throughout their career/service tenure. At the time of their retirement, the service book indicates the entry that they have retired as Pump Drivers and they were working on the post of "Pump Driver". Though such entries in the service book are about 12 years ago, none of the petitioners have challenged such entries. It is only because the Corporation issued a circular dated 06/10/2009 by which Pump Operators were given revised pay scales under the 5th Pay Commission Recommendations with retrospective effect, that these petitioners approached the Industrial Court to take undue advantage of the error committed by the Corporation in mentioning their appointments as Pump Operators.

5. I have considered the submissions of the learned Advocates which apparently indicate that these petitioners themselves stated in their evidence that they had worked as Pump Drivers. At the time of

their retirement, the pay scale available to a Pump Operator and a Pump Driver was the same. Entries in the service book, specifically indicating their pay scales and that they have retired as Pump Drivers, were not questioned by the petitioners for about 7 years. It is only when the Corporation issued the circular dated 06/10/2009, giving revised pay scale benefits to the Pump Operators with retrospective effect, that the petitioners approached the Corporation and subsequently the Industrial Court.

6. No evidence was brought before the Industrial Court by these petitioners to indicate that they factually worked as Pump Operators and not as Pump Drivers. So also, had these petitioners worked as Pump Operators through out their tenure, there was no reason for these petitioners to suffer confusion as to whether they worked as Pump Operators or Pump Drivers. Since they had worked as Pump Drivers, they have so stated in their oral evidence.

7. In the above backdrop, I do not find that the Industrial Court has committed any error in concluding that the petitioners were working as Pump Drivers. So also, the complaints having been filed after 7 years of their retirement despite the entries in their service book, led the Industrial Court to conclude that those complaints were

not entertainable on account of limitation.

8. Considering the above, both these petitions, being devoid of merit, are therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)