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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7608/2014

Seth Nandlal Dhoot Hospital,
A-1, MIDC, Chikalathana, Jalna Road,
Aurangabad, through its Chief Executive
Officer.

...Petitioner...

Versus

Mrs. Shobha W/o Gangadhar Ghodke,
Age : 43 years, Occu : Service,
R/o : Bajarang Awas, H.No. 112,
Shivsadan, Behind Hotel Champawati,
Jalna Road, Aurangabad.

...Respondent...

.....

Shri A.R. Joshi, Advocate a/w Shri V.P. Golewar, Advocate
for petitioner.

Shri T.K. Prabhakaran, Advocate a/w Shri G.S. Telangre,
Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 15.03.2016

ORAL JUDGMENT :

1] On 2.3.2016, I had recorded the consent of the
learned Advocates as under:-

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"1. The learned Counsels for the respective sides submit on instructions that they have no objection if this Court hears this matter.

2. The request is made on behalf of Mr. Prabhakaran that the matter may be adjourned for some time.

3. By the consent of the parties, stand over to 15.03.2016."

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

3] The petitioner is aggrieved by the judgment and order dated 20.6.2014 delivered by the Industrial Court, Aurangabad, in Complaint (ULP) No.165/2010.

4] Shri A.R. Joshi alongwith Shri V.P. Golewar, learned Advocates for the petitioner, have strenuously criticized the impugned judgment. Their contentions can be summarized as follows:-

a] The respondent is a Nurse, who is confirmed in employment and is a senior-most Nurse with the petitioner.

b] Certified Standing Orders are applicable to the employees and the petitioner - establishment.

c] A wage rise of Rs.2500/- per month in the

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year 2008 was given to a particular group of Nurses since they were lagging behind in their earnings and the petitioner intended to bring them closer to the senior Nurses.

d] The respondent was not given such a wage rise since she was already one of the highest paid Nurses in the petitioner – establishment.

e] The respondent preferred a ULP complaint before the Industrial Court invoking Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

f] The complaint lacked in proper pleadings.

g] A specific cause of action was not made out.

h] Particulars of a set of workers as is required to be averred under Item 5 of Schedule IV were not mentioned in the complaint though mere names were stated without giving their details.

i] The petitioner filed its written statement opposing the complaint.

j] It was averred that increments have not

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been given to any employee in the year 2008.

k] The respondent was already earning Rs.10,000/- per month.

l] Junior Nurses were getting lesser salaries, though they were being paid minimum wages and, therefore, they deserved a wage rise.

m] The respondent admitted in cross-examination that an increment is not a matter of right and is within the exclusive domain of the employer.

n] It was admitted that wage rise is given after considering the nature of work performed by an employee.

o] It was admitted that the respondent did not produce any evidence with regard to the wage rise given to Smt.Nikam and Smt.Ingale.

p] It was admitted that her gross salary was more than Rs.10,000/-.

q] The Industrial Court has erroneously concluded that the respondent deserved a wage rise merely because other Nurses have been given such a rise.

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r] The Industrial Court has held in favour of the respondent only on account of sympathy.

s] The Industrial Court lost sight of the *bona-fide* intention of the petitioner that the junior Nurses were intended to be brought closer to the senior Nurses in terms of their monthly wages.

t] The Industrial Court has erroneously concluded that unfair labour practice under Item 5 of Schedule IV was proved against the petitioner – management.

u] The impugned judgment deserves to be quashed and set aside for being perverse.

v] Costs of Rs.15,000/- have been unnecessarily imposed upon the petitioner – management without any fault on its part.

5] Shri T.K. Prabhakaran alongwith Shri Telangre, learned Advocates for the respondent – employee, have supported the impugned judgment. Contention is that on account of the averments set out in the written statement of the petitioner, the case of the respondent is in fact improved. An employee cannot have a right to claim

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increment since an increment is not a matter of right unless it is provided for by the terms and conditions of employment, which includes a short term or a long term settlement.

6] It is further submitted that if the petitioner has given a wage rise to some Nurses, they could not have excluded the respondent from being a beneficiary to such a wage rise since wage rise is not a normal feature, but is aimed at increasing the wages of employees considering that the cost of living has grown.

7] It is further submitted that the petitioner should have brought evidence before the Court to support its contention that the junior Nurses were given a wage rise considering that they were working more than the respondent and their load of work was much more than the work performed by the respondent. In the absence of any evidence to prove this aspect, the act of the petitioner in giving a wage rise to a group of Nurses would, therefore, squarely fall within Item 5 of Schedule IV.

8] I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

9] From the contentions of the parties and the pleadings before the Industrial Court, it is apparent that the respondent has acknowledged that a wage rise was given by the petitioner to a group of Nurses. It is not disputed that the respondent is a Nurse, who falls in the same category to which the other Nurses belong. It is also undisputed that no Nurse was given an increment in the year 2008 apart from the wage rise of Rs.2500/- given to a selected few. It is also undisputed that there is no wage rise or wage revision settlement between the Nurses and the petitioner or any Union, which such Nurses may belong to.

10] I find from the examination-in-chief of the petitioner's witness that the only ground for giving a wage rise of Rs.2500/- per month to a group of Nurses in the year 2008 is based on excess work load. Besides this averment, the petitioner has not put forth any other case, which would entitle the petitioner to resort to a reasonable classification and differentiation between the senior-most Nurses and the junior Nurses.

11] However, it cannot be ignored that besides the affidavit in lieu of examination-in-chief, the petitioner

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has not placed on record before the Industrial Court any document to support its stand. No evidence with regard to excess work load of a group of Nurses was brought before the Court. Naturally, the Industrial Court could not appreciate the contentions of the petitioner since there was nothing before the Court by which the contentions of the petitioner could be supported.

12] Insofar as giving a wage rise to a group of Nurses is concerned, the petitioner has admitted to the said fact and there is, therefore, no dispute.

13] In my view, even if the petitioner had desired to make a reasonable classification in between the Nurses falling in the same class on the basis of the seniority, the junior Nurses could not have been given a wage rise only to bring them closer to the senior Nurses, who by their service span were much senior to the junior Nurses. Owing to their length of service as they grew in seniority, their wages also grew over a period of time. That growth could not be stunted by suddenly giving a substantial wage rise of Rs.2500/- to the junior Nurses. If the cost of living had grown and if life had become dearer to the junior Nurses, the senior Nurses could not

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be an exception to the growth in the cost of living. I, therefore, do not find any justification in the act of the petitioner in giving a wage rise to a select group of Nurses.

14] In the light of the above, I do not find that the impugned judgment could be termed as being perverse or erroneous so as to cause grave injustice to the petitioner.

15] Nevertheless, insofar as the contention of the petitioner with regard to the imposition of costs is concerned, I am inclined to cause an interference only to that extent since I do not find that the petitioner has been held to have given a wage rise to the junior Nurses with a deliberate intention of excluding / depriving the respondent from such a wage rise. The allegation of unfair labour practice under Items 9 and 10 of Schedule IV has been negated by the Industrial Court.

16] In the light of the above, this petition is partly allowed only to the extent of setting aside the direction of the Industrial Court imposing costs of Rs.15,000/- on the petitioner. The rest of the judgment of the Industrial Court is sustained.

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17] Rule is made partly absolute in the above terms.
There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)