

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9630 OF 2016

DHULE MUNICIPAL CORPORATION
VERSUS
VIJAY HANUMANT MARATHE, DIED THROUGH LRS.

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Advocate for Petitioner : Shri Shah Subodh P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 01, 2016

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PER COURT :-

1. The petitioner is aggrieved by the judgment of the Industrial Court, dated 9.6.2015, by which Complaint (ULP) No.53 of 2013, filed the legal heir of the deceased employee has been allowed and the difference of salary, as per the V Pay Commission and VI Pay Commission have been directed to be paid.

2. I have heard Shri Shah, learned Advocate on 26.9.2010 and again today. Contention is that there is no dispute about the payment of difference in pay scale as per the V Pay Commission's recommendations, though the same has not been still paid to the respondent.

3. In so far as recommendations of the VI Pay Commission are concerned, contention is that by the Government Resolution dated

10.8.2009, the benefits of the VI Pay Commission were to be paid only to those persons, who have been occupying sanctioned posts. It is stated that the respondent was not occupying a sanctioned post, though it is admitted that she has been confirmed in service, in the light of a direction of the Court.

4. I find that, the contentions of the petitioner before the Industrial Court have been considered by the Court in paragraph No.3. It was contended that the petitioner admits the liability to pay the V Pay Commission's pay scales. However, because of the weak financial condition, the petitioner is unable to make the said payments.

5. In the memo of the Writ Petition, the petitioner submits that the recommendations of the VI Pay Commission are not applicable to the respondent herein as she is not occupying a sanctioned post. It is, however, admitted that the arrears towards difference in salary have been paid to a few employees, who were in urgent need of finance. This statement in the petition itself will indicate that the petitioner has paid the difference of salary to some employees, who were facing financial difficulties.

6. The Government Resolution dated 3.8.2009, issued by the State Government has been taken into account by the petitioner and

accordingly, even the VI Pay Commission recommendations have been made applicable. By a decision taken by the petitioner on 20.7.2010, the arrears of the salary under the VI Pay Commission for the period 1.1.2006 to 31.3.2009 would be disbursed after the Government grants funds and the same would also be applicable to the provident fund accumulations of those employees, who may have retired.

7. I also find that the petitioner had not produced anything on record before the Industrial Court to the extent of supporting its contention that only those employees, who were made permanent on sanctioned posts have been paid the difference of wages under the VI Pay Commission recommendations. The writ jurisdiction of this Court cannot be exercised for enabling a litigant to fill in lacuna in evidence recorded before the trial Court. It also cannot be ignored that the respondent has passed away on 11.9.2008.

8. The petitioner has relied upon a judgment of the Honourable Supreme Court in the matter of State of Punjab and others Vs. Amar Nath Goyal and others [(2005) 6 SCC 754]. Upon going through the facts of the case, it is apparent that the Honourable Apex Court was dealing with the cases of retired employees of the Government of Punjab and a few retired Judges of the High Court of Punjab and Haryana, as well as a retired Judge of this Court. So also, the issue was with regard to limiting the benefits to the employees, who retire

or die on/or after 1.4.1995, in view of the decisions taken by the State / Central Governments. The facts of the case since are distinguishable, the ratio laid down therein, would not be applicable to this case.

9. The Industrial Court has concluded that the deceased employee is covered by the said V and VI Pay Commissions recommendations and as such would be entitled to a difference till he passed away on 11.9.2008, while still in service.

10. Considering the above, I do not find that the impugned judgment would be termed as being perverse or erroneous. This petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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