

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.666 OF 2016

Mahatma Phule Krishi Vidyapeeth,
Rahuri, Through its Registrar,
Shri Dilip Dnyandeo Pawar,
Age-51 years, Occu-Service,
R/o University Campus, Rahuri,
At Post : Rahuri, Tq.Rahuri,
Dist.Ahmednagar

-- PETITIONER

VERSUS

Yamunabai Bhanudas Dhonde,
Age-Major, Occu-Nil,
R/o Sade, Tq.Rahuri,
Dist.Ahmednagar

-- RESPONDENT

Mr.P.L.Shahane, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 29/11/2016

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 20/02/2015 by which the Industrial Court has allowed Complaint (ULP) No.99/2012. Consequentially, the petitioner is directed to extend the benefits of the Assured Progress Scheme and give benefits

of the time bound promotion scheme to the complainant after 12 years from confirmation on the post of “Majdoor” in 1979 and thereafter grant the second benefit of Assured Progress Scheme after 12 years.

3. I have heard the learned Advocates for the respective sides at length.

4. The controversy in this proceeding is considerably reduced in the light of the fact that the learned Advocates for the respective sides jointly submit that the Time bound Promotion Scheme was brought to an end by the GR dated 20/07/2001 and the Assured Progress Scheme was introduced. Consequentially, the Time Bound Promotion Scheme applicable to the petitioner/University was brought to an end. The Assured Progress Scheme was not made applicable to the petitioner/University.

5. There is no dispute that the respondent/employee was entitled to the Time Bound Promotion Scheme. The said scheme, that was introduced for the Class C and Class D categories, was in the backdrop of these employees having become stagnant in the absence of promotional avenues. The said scheme was introduced by the GR dated 21/09/1999 in pursuance to the Time Bound Promotion

Scheme of 01/10/1994.

6. It is admitted that though the respondent joined on 01/07/1979 and her name was not mentioned in the Annexure of employees annexed to Complaint (ULP) NO.1/2003, which was allowed by the Industrial Court and the said judgment was sustained by this Court by its order dated 04/08/2010 in WP No.514/2010, she was entitled to the benefits of the Time Bound Promotion Scheme. Unfortunately, she was left out.

7. It is also admitted that the respondent/employee retired in 2007 after attaining the age of superannuation. 5 years post retirement, she preferred Complaint (ULP) No.99/2012 before the Industrial Court seeking the same benefits with retrospective effect. By the impugned judgment, the Industrial Court has allowed the said complaint by passing the following order :-

“1. The complaint is allowed.

2. It is hereby declared that respondent Agricultural University has engaged in unfair labour practices under Items- 5, 9 and 10 of Sch.IV of MRTU and PULP Act, 1971 by not giving the benefits of Assured Progressive Scheme to the complainant. Therefore, respondent shall cease and desist from engaging unfair labour practices forthwith.

3. The respondent shall give the first benefits of Time Bound

promotion to the complainant after 12 years from confirmation on the post of Mazdoor in 1979 and thereafter second benefit of Assured Progressive Scheme thereafter after 12 years within a period of one month.

4. *There is no order as to costs."*

8. The grievance of the petitioner is that an inordinate delay has been caused in the filing of the complaint. The said complaint was filed 5 years after retirement. Benefits which date back to completion of 12 years after joining on 01/01/1979 have been prayed for after about 22 years keeping in view that the respondent would complete 12 years in employment in 1990. Further grievance of the petitioner is that after the conclusion of the said scheme, the funds are not being allocated by the Government and consequentially, the University would have to bear the financial burden. It is further stated that if a case of such nature is granted by this Court, it would open flood gates to similar employees who had never staked their claims and would start approaching the University for such benefits after their retirements.

9. Mr.Barde submits that he can not dispute that there is an inordinate delay in this matter. Had the name of the respondent be included in Complaint (ULP) NO.1/2003, she would have earned the

said benefits under the judgment of the Industrial Court dated 18/11/2009 which has been sustained by this Court by its order dated 04/10/2010.

10. He further submits that being a class-IV labourer, and practically being illiterate with no knowledge about her own rights, the respondent was silent and only upon being advised 5 years after retirement that she has staked her claim.

11. He then draws my attention to the cross-examination of Mr. Hanuman Ganpat Kalahapure, who had deposed on behalf of the University in the respondent's complaint, to support her contention that the said witness clearly admitted that the respondent was confirmed in employment and she was eligible for the benefits of the Time Bound Promotion Scheme and that she did not get such benefits only because her name was not mentioned in Complaint (ULP) No.1/2003.

12. He then draws my attention to the order passed by this Court (Coram : Sunil P. Deshmukh, J.) dated 24/06/2014 in WP No.10735/2012 by which this Court had granted benefits of absorption to similar employees. I find that the said order is of no assistance to

the respondent/employee since it is in an all together different set of facts and the claim was with regard to absorption on available posts and not with regard to the scheme as was applicable to the petitioner.

13. Be that as it may, the fact remains that the petitioner/ University concedes through its evidence that the respondent was entitled for the benefits of the Time Bound Promotion Scheme. Nevertheless, delay of about 22 years and especially in staking a claim after about 5 years of retirement can not be entertained.

14. Considering the comparative hardships and the effect of such orders, I deem it proper to deprive the respondent of all monetary benefits under the Time Bound Promotion Scheme till the date of her retirement. Granting notional benefit of including her name in the list of promotees as per the Time Bound Promotion Scheme would meet the ends of justice as the petitioner will then calculate the scale of wages which the respondent would have otherwise being entitled to and based on the the said scale as on the date of retirement, her retiral benefits could be calculated so as to extend retiral/pensionary benefits to the respondent from the date of the filing of her complaint.

15. In the light of the above, this petition is partly allowed. The

impugned judgment of the Industrial Court is modified by setting aside the declaration of ULP against the petitioner and by directing the petitioner to calculate the entry of the respondent on the promotional positions under the Time Bound Promotion Scheme notionally so as to arrive at the last pay scale which she would have otherwise been entitled to at the time of her retirement and calculate her pension on the basis of the said scale from the date of filing of her complaint.

16. The respondent shall, within a period of 6 (six) weeks, submit her proposal to the appropriate Department. The said Department, on receiving the proposal, shall grant the revised pension to the respondent/employee from the date of her complaint with arrears, within a period of 12 (twelve) weeks. It is made clear that the respondent will not be entitled for the monetary benefits from the date she became eligible for promotion till the date of her retirement in as much as she will not be entitled to the pensionary benefits prior to the date of her filing of the complaint.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)