

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10137 OF 2016

Vasant S/o Manaji Kamble,
Age-56 years, Occu-Nil,
R/o Punammoti Nagar,
Ahmednagar

-- PETITIONER

VERSUS

1. The Chairman,
Bhaskar Pandurang Hiwale Education
Society, Vishwast Sanstha,
Ahmednagar,

2. The Director,
The Centre for Rural Development
Institute of Social Work and Research
Station Road, Ahmednagar,

3. The Special District Welfare Officer,
Office of Social Welfare,
Datarange Mala,
Ahmednagar,

4. Shashikant s/o Anand Hiwale,
Age-60 years, Occu-Nil,
R/o Bungalow No.27,
Anandbhagya, Prakashpur,
Ahmednagar, Dist.Ahmednagar

-- RESPONDENTS

Mr.S.V.Natu, Advocate for the petitioner.
Mr.Ashok Patil h/f Mr.A.R.Joshi, Advocate for respondent Nos.1 & 2.
Mr.S.B.Joshi, AGP for respondent No.3.
Respondent No.4 is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/10/2016

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 25/07/2016 by which Complaint (ULP) No.23/2009 filed by the petitioner, has been dismissed. There were two complainants before the Industrial Court. Complainant No.2 alone is the petitioner in this petition.

3. I have heard the strenuous submissions of the learned Advocates for the respective sides and I have also gone through the affidavit in reply filed by respondent Nos.1 and 2 dated 19/10/2016. Considering the short issue involved, I am not inclined to advert to the entire submissions of the learned Advocates. Suffice it to say, the issue is as regards the unpaid difference in the subsistence allowance from 1996 to 2005 as per the 5th Pay Commission recommendations.

4. The affidavit in reply placed on record indicates that the respondents have calculated the subsistence/suspension allowance payable to the petitioner under the 4th Pay Commission from

November 1997 till 18/10/2005. An amount of Rs.6,10,386/- has been paid to the petitioner by the Management.

5. There is no dispute that the 5th Pay Commission recommendations are applicable to the petitioner and he was entitled to the subsistence allowance as per the 5th Pay Commission from the date it was made applicable to the establishment and its employees.

6. Considering the above, in my view, the Industrial Court has fallen in a patent error by concluding that the ULP complaint filed by the petitioner was time barred and he should have approached the Labour Court u/s 33(C)(2) of the I.D.Act, 1947. It is trite law that if an amount is payable and the employer continues to fail in making the payment, it would amount to a recurring cause of action.

7. As such, the petitioner can be held to be entitled for the difference in the subsistence allowance as per the 5th Pay Commission recommendations.

8. It is informed by Mr.Patil, learned Advocate for the Management that the Directorate of Social Welfare has granted permission to suspend the petitioner vide its order dated

03/03/1998. Said order has been issued by the Director of Social Welfare represented by respondent No.3 Pursuant thereto, the Management has sent almost 8 letters seeking release of grants so as to pay the subsistence allowance to the petitioner. It is not stated that the said grants are not available for the purpose of Payment of subsistence allowance.

9. In the light of the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 25/07/2016 is quashed and set aside and the Complaint (ULP) No.23/2009 stands partly allowed by directing the respondent/Management to pay the difference in the subsistence allowance as per the recommendations of the 5th Pay Commission within a period of 12 weeks from today.

10. Needless to state, respondent No.3 and the Directorate of Social Welfare would consider the 8 reminders sent by the Management for seeking release of grants for payment of the subsistence allowance. Respondent No.3 and the competent authority shall therefore take a decision on the said communications within a period of 3 weeks from today and communicate the same to the respondent/Management forthwith.

11. So also, the Management is at liberty to submit a proposal, if not already submitted, for release of grants so as to pay the difference in subsistence allowance as per the 5th Pay Commission recommendations and the Competent authority, upon receipt of the said proposal, shall decide the same within a period of 4 weeks from the date of receipt of the said proposal. It be noted that the claim for reimbursement and release of grants put forth by the respondent/Management shall be considered by the competent authority in accordance with the rules applicable.

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

13. Pending civil application, does not survive and is disposed of.

(RAVINDRA V. GHUGE, J.)