

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3322 OF 2016**

**The Chief Officer
Vita Nagar Parishad**

..Petitioner

Vs.

Vilas Dhondiram Shitole & Ors

..Respondents

Mr. N. V. Pawar for the Petitioner

Mr. Akshay Shinde i/b Mr. A. M. Kulkarni for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 21st SEPTEMBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the judgment and order dated 30-11-2012 passed by the Learned Member of the Industrial Court Sangli, by which order, the complaint in question being Complaint ULP No.136 of 2010 filed by the Respondent No.1 came to be allowed consequentially a declaration came to be issued that the Petitioner herein has indulged in unfair labour practice and further direction came to be issued to the Petitioner to pay the difference recovered from the Complainant since 1996 till the date of superannuation i.e. 31-5-2006 to the Complainant.

2 The Respondent herein is the original Complainant who had filed the said Complaint ULP No.136 of 2010. The cause for filing the said complaint was the order dated 22-3-2005 issued by the Director of Municipal Administration by which order the Director had directed the Petitioner to revise the pay scale of the Respondent from 1640-2900 to 1400-2600. The gist

of the said order was that an municipal employee would not be entitled to a higher scale than a Government employee in the same post.

3 In so far as the pay scale of 1640-2900 is concerned, a few back ground facts would have to be noted. The Respondent herein joined the services of the Petitioner on 1-1-1971 and was promoted as Head Clerk on 1-9-1971 and on 1-1-1976 was put in the scale of 395-800 as per the pay scale mentioned in the Bhole Pay Commission. In view of the work load of the post of Head Clerk a resolution came to be passed by the Municipal Council regarding the grant of the pay scale of 1640-2900 to the Respondent. The said resolution came to be approved by the Director of Municipal Administration by order dated 20-11-1995. The Respondent was enjoying the said scale till the decision came to be taken vide order dated 22-03-2005 by the Director of Municipal Administration to revise the pay scale of the Respondent from 1640-2900 to 1400-2600. It seems that prior to the said revision, a show cause notice came to be issued to the Respondent on 11-2-2002 which show cause notice was replied to on behalf of the Respondent. However, as indicated above, the Respondent's pay scale came to be reduced to the scale of 1400-2600 on 22-3-2005. This as indicated above gave rise to the filing of the instant Complaint ULP No.136 of 2010 wherein the Petitioner alleged unfair labour practice under Item 5, 9 and 10 of Schedule IV of MRTU and PULP Act. The Labour Court framed issues amongst which was the issue whether by

passing the order dated 22-3-2005, the Petitioner herein has committed unfair labour practice. The parties led evidence in support of their respective assertions. The Learned member of the Industrial Court by the impugned judgment and order dated 30-11-2012 has allowed the said Complaint and issued a declaration and granted the reliefs which have been adverted to hereinabove.

4 The Learned Member of the Industrial Court held that the higher pay scale granted to the Petitioner was a considered decision of the Petitioner Municipal Council which was approved by the Director of Municipal Administration. The Learned Member of the Industrial Court observed that the Respondent had not asked for the pay scale but was given the said pay scale having regard to the nature of the duties and responsibilities of the post of Head Clerk. The Learned Member distinguished between personal pay and special pay and thereafter recorded a finding that the pay scale granted was not a personal pay but a special pay, which was granted to the Respondent. The Learned Member held that though before revising the pay scale a show cause notice was issued to the Respondent, the Petitioner and the Municipal Administration was not entitled to revise the pay scale once having approved the same. The Learned Member adverted to the evidence on record, wherein a similar order passed by the Industrial Court in respect of the Head Clerk working in the Tasgaon Municipal Council was not challenged by the

Respondents and the Head Clerk working in the said Tasgaon Municipal Council was getting pay in the scale of 1640-2900. The said Tasgaon Municipal Council being in the same District. The Learned Member therefore found that the recovery of the amount from the Petitioner as well as the decision as communicated by the order dated 22-3-2005 amounts to an unfair labour practice within the meaning of the MRTU and PULP Act and therefore issued the declaration and issued the directions as contained in the operative part of the impugned order.

5 The Learned Counsel appearing on behalf of the Petitioner sought to justify the action taken by the Petitioner Municipal Council on the basis of the order dated 22-3-2005 of the Director of Municipal Administration. The Learned Counsel would contend that the Respondent was not entitled to a scale higher than the scale applicable to an equivalent to the post in the State Government.

6 In my view, it is not possible to accept the said contentions of the Learned Counsel for the Petitioner in the light of the findings recorded by the Learned Member of the Industrial Court. The impugned order therefore does no suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its writ jurisdiction under Article 227 of the Constitution of India the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]