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*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 4499 OF 2005

Yeshwantrao Chavan Maharashtra
Open University
Gyangangotri, Gangapur Nashik.

.. Petitioner

Versus

1. Shri Sunil Dattatreya Nikam
(Orig. Complainant in Complaint
(ULP) No.173 of 2000
House No.3508
Durgashanti Nivas
Opp. Savta Maharaj Mandir
Chavhata, Old Nashik
Nashik 422 001.
2. Shri Paresh Ashok Shivurkar
(Orig. Complainant in Complaint
(ULP) No.174 of 2000
1 Nilima Apartment
Canada Corner
Sharanpur Road
Nashik 422 005.
3. Shri Dilip Vinayakrao More
(Orig. Complainant in Complaint
(ULP) No.175 of 2000
At & Post : Karanjavan
Tal. :Dindoshi
Dist. Nashik – Pin Code 422 202
4. Sau.Meena Vishwas Agnihotri
(Orig. Complainant in Complaint
(ULP) No.176 of 2000
Block No.12

Balasaheb Co-op. Hsg. Society
Dutta Nagar, Peth Road
Nashik.

5. Shri Madhukar Gajanan Khandekar
(Orig. Complainant in Complaint
(ULP) No.177 of 2000
Ekaveera Nagar
Patkhana Road
At & Post : Nandgaon
Nashik 423 106

6. Shri Anand Kamalakar Barve
(Orig. Complainant in Complaint
(ULP) No.178 of 2000
237A, Dare Wada
Budhwar Peth
Nashik 422 001.

7. Shri P.S.Shinde
Member, Industrial Court,
Nashik.

.. Respondents

Mr.Vinod Tayade i/b Mr.Piyush Shah, for the Petitioner.
Mr.M.S.Karnik, for Respondents.

***CORAM: N.M.Jamdar, J.
Tuesday 5 January, 2016.***

ORAL JUDGMENT :

The Petitioner -Yeshwantrao Chavan Maharashtra Open University, Nasik challenges the order passed by the Industrial Court Nasik, dated 9 June 2005 allowing the Complaint filed by the Respondent Nos.1 to 6 (the Respondents) and directing the University to grant pay-scale to the Respondents with effect from 2 December 1991 and to Respondent No.3 from 1 July 1992.

2. An Advertisement was issued for recruitment of the post of Assistant in the services of the Petitioner-University, on 1 March 1991. The Advertisement stated that a waiting list was to be prepared for the post of Assistant and others and applications were called from eligible candidates. It was specified in the Advertisement that a general knowledge written test would be conducted and the persons who appear in merit list will be given technical exam and those who pass will be called for personal interview. The Respondents accordingly applied pursuant to the Advertisement. Respondents were in the list and were given work of clerical nature and consolidated pay. The Respondents thereafter were given appointment orders on 27 February 1993 with effect from 1 March 1993. Pay-scale was fixed at ₹ 950-20-1150-EB-25-1500. The Petitioner found out that certain other eight employees who were also included in the waiting list pursuant to the same Advertisement issued in the year 1991 and were given appointment orders in the year 1994 were given pay-scale with retrospective effect from 19 December 1992, even though they were junior to the Respondents. The Respondents made some representations and approached Grievance Committee set up by the University in the year 1999. The Grievance Committee rejected the grievance of the Respondents by order dated 22 July 2000.

3. The Respondents filed their respective Complaints in the Industrial Court, Nasik. – Complaint (ULP) No.173 of 2000 by Shri Sunil Dattatreya Nikam, Complaint (ULP) No.174 of 2000 by

Shri Paresh Ashok Shivurkar, Complaint (ULP) No.175 of 2000 by Shri Dilip Vinayakrao More, Complaint (ULP) No.176 of 2000 by Sau.Meena Vishwas Agnihotri, Complaint (ULP) No.177 of 2000 by Shri Madhukar Gajanan Khandekar and Complaint (ULP) No.178 of 2000 by Shri Anand Kamalakar Barve. The Respondents prayed that the action of the Petitioner in not granting them benefits from 1 March 1991 i.e. retrospectively when it was given to the other set of employees was an unfair labour practice and they should be given scale of ₹ 950-20-1150-EB-25-1500 from 1 March 1991.

4. The Petitioner-University filed its Written Statement and contested the claim. The Petitioner-University raised an objection to the maintainability of the Complaint on the ground that special machinery is created under the Yashwantrao Chavan Maharashtra Open University Act, 1989 (Maharashtra Act No.XX of 1989) for resolving the dispute and the jurisdiction of the Industrial Court is barred. Petitioner also contended that the Complaint is beyond time and there is a gross delay of nine years and six months. It was contended that even though Respondents did not qualify in written test they were included in the waiting list and the other eight employees regarding whom a grievance was made were doing different and skilled work. The Industrial Court after considering the evidence on record concluded that the Petitioner University had committed unfair labour practices by denying the pay- scales of the Respondents with retrospective effect and accordingly the Industrial Court directed that the Respondents be given pay-scale

from the date of their respective initial entry i.e. 2 December 1991 and one of the Respondent from 1 July 1992. The Complaints were accordingly allowed by the impugned order. Thereafter the present petition has been filed. By order dated 22 September 2005 Rule was issued and the impugned order was stayed.

5. I have heard the learned counsel for the parties.

6. Mr.Vinod Tayade the learned counsel for the Petitioner, firstly contended that the Industrial Court had no jurisdiction to entertain the Complaints. Except for stating this proposition orally nothing further is shown. Mr.Karnik, the learned counsel for the Respondents submitted that the jurisdiction of the Industrial Court is not barred and it was open to the Respondents to select either of the forums i.e. Industrial Adjudicator or the College Tribunal and that the Industrial Court has rightly taken the view that the Complaints are maintainable. However even assuming that the Industrial Court had jurisdiction to entertain, the order passed by the Industrial Court needs to be interfered with for the reasons given hereinafter.

7. The primary grievance of the Respondents is the breach of Item 5 of Schedule IV of Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971. Schedule IV which prescribes General Unfair Labour Practices on the part of the employers enumerated Item 5 as :- *'To show favouritism or partiality to one set of workers, regardless of merits'*, as an unfair labour

practice'. The Respondents were taken on waiting list pursuant to Advertisement issued in the year 1991. There are no appointment letters placed on record till the appointment letter of 27 February 1993. This appointment letter appoints Respondents from 1 March 1993. The Petitioner-University is a statutory body and is governed by its own rules. Pay-scale will apply from the date of appointment. The Respondents do not have any legal right to claim a pay-scale from the date prior to the date of appointment in service. Mr.Karnik has not been able to show any such right. It is only on the basis of allegation of unfair labour practices under Item No.5 that a pay-scale from retrospective effect has been claimed. The Industrial Court has accepted this grievance of the Respondents and has granted them relief.

8. To consider the case of the Respondents based on Item 5, three main grounds will have to be considered. Firstly, whether the grievance regarding breach of Item No.5 was made diligently. Secondly, whether the Complaint filed was beyond period of limitation and thirdly, whether in fact, there was any favouritism or partiality to other set of workers irrespective of merits.

9. As regards the delay, the Respondents were given appointment letters in February 1993, and with effect from 1 March 1993. The Respondents accepted the appointment letters. They could not have had any grievance regarding the same as their pay-scale was made applicable from the date of appointment. In the cross-examination the witness for the Respondents has admitted

that it was when the eight employees were confirmed in the year 1994, their cause of action arose. In the cross-examination the Respondents have stated that they had not approached the Industrial Court earlier because it is a continuous case of cause of action, and also that the cause of action arose when eight employees were confirmed. Even assuming the year 1994 is taken as a starting point, the Petitioners filed Complaint in the year 2000. Except by stating that some representations were made, no cogent reason is given for this lapse of atleast six years. It has to be kept in mind that the limitation prescribed under the Act of 1971 is of 90 days. There is no question of continuous cause of action as alleged by the Respondents as the act of granting benefit to the other eight employees was complete in the year 1994. The Industrial Court has taken rejection of the representation made by the Grievance Committee as a starting point of limitation. If that was to be taken as starting point of limitation, the Respondents could have then continued pursuant to their remedy, under the Maharashtra Universities Act or any other forum. If the Respondents wanted to invoke and seek remedy on the basis of Item no.5 of MRTU & PULP Act, which is a special remedy available then the Respondents ought to have approached the Industrial Court with expeditiousness. The Industrial Court has not taken the aspect very seriously and has entertained a completely stale and hopelessly belated claim based on breach of Item no.5. The Industrial Court has also not considered as to why the Respondents could not approach the Industrial Court earlier. The Petitioner-

University, being a public body, if had wrongfully extended some benefit to one set of employees, then grievance of the Respondents, for lack of any legal right, may or may not have been considered by the College Tribunal. It is therefore, that the Respondents have chosen to approach the Industrial Court to invoke the special remedy under the Act of 1971. Mr.Tayade is therefore, justified in his grievance that belated and stale claim has been entertained by the Industrial Court irrespective of limitation of period of 90 days provided under the Act of 1971. The discretion to condone delay has to be exercised judiciously and cannot be exercised merely because the power is available, without considering the prejudice to the other side.

10. Even otherwise the grievance regarding breach of Item no.5 of Schedule IV has no merit. As stated earlier, the Respondents, who were employed with a statutory body do not have any legal right *per se* to get pay-scales fixed retrospectively and foundation of their case that the other set of workers has been granted this relief. To attract Item no.5 the employer should have shown favouritism and or partiality to one set of workers, regardless of merits. This postulates that there has to be similarity between the two set of workers and favouritism or partiality is shown regardless of merits. If this principle is to be invoked then it must be shown that regardless of merits and regardless of both sides being comparable that favouritism has been shown. According to Mr.Karnik, that the fact that the other eight employees were also taken on waiting list

through same Advertisement these two set of workers are comparable, and therefore no other inquiry is necessary. As stated earlier the Respondents after their enrollment were not given appointment orders till February 1993 and they continued to work on consolidated pay basis.

11. The Petitioner-University through the deposition of their witness has placed on record that the other set of workers were doing Desk Top Publishing for production of books which involved technical skill with special D.T.P software. In the year 1991-92 no employee could perform the work of D.T.P as it required technical skill. It was specifically asserted that the work carried on by the Respondents was of routine clerical nature while the other eight employees worked in skilled and technical capacity. Nothing contrary is shown by the Respondents except by submitting that there is no distinction between this set of workers since they were taken on list pursuant to the same Advertisement. However, the nature of work performed by the Respondents and these eight workers after their enrollment on the waiting list cannot be lost sight of to ascertain whether any favouritism or partiality was shown irrespective of merits. The work carried out by these two set of employees was totally different and the eight employees carried out work of technical nature. The Industrial Court has founded its conclusion only on the ground that all employees were taken in service pursuant to the Advertisement of 1991 and no distinction therefore, could be made. The Industrial Court has lost sight of the crucial admitted aspect of the case that these two set of workers

were not doing the same type of work. To invoke Item no.5, which is an unfair labour practice, it has to be established that there was favouritism or partiality, regardless of merits.

12. Furthermore, the Petitioner-University is a statutory body and even assuming some benefits were wrongly given to some set of employees, without any detailed inquiry, such benefit cannot be casually extended to all other employees. Doing so would lead to complete violation of rules governing the statutory body.

13. To conclude, firstly, that the Industrial Court has not considered the aspect of delay in its proper perspective and has entertained a claim which was hopelessly time barred. Secondly the Industrial Court did not consider the nature of work performed by two set of workers before holding that there was favouritism or partiality. The approach of the Industrial Court therefore, is against the settled principles governing the condonation of delay and the admitted position on record does not lead to the conclusion of breach of Item No.5 of Act of 1971. These two points go to the root of the case and vitiate the conclusion reached by the Industrial Court. Therefore in the circumstances the order passed by the Industrial Court will have to be quashed and set aside. Accordingly **Rule is made absolute** in terms of prayer clause (a). No order as to costs.

(N.M.Jamdar, J.)