

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4809 OF 2001

The Manager,
Maharashtra Rajya Sahakari
Kapus Utpadak Panan Mahasangh
Maryadit, Jalgaon Zone,
Ashirwad Building,
Opposit Natraj Theatre,
Jalgaon.

...Petitioner.

Versus

Hukumchand Ratanlal Chandiwal,
now deceased, through his L.Rs. :

- A) Smt. Sulochana W/o. Hukumchand
Jain, Age : 61 years,
- B) Sanjay Hukumchand Jain,
Age : 43 years,
- C) Anil Hukumchan Jain,
Age : 38 years,
- D) Sow. Kiran Ajaykumar Papadiwal,
Age : 40 years,
- E) Sow. Warsha Nandkumar Katariya,
Age : 36 years,

All R/o. : Bhikamchand Jain Nagar,
Jalgaon.

...Respondents.

...
Advocate for Petitioner : Shri S.S.Wagh h/f Shri S.T.Shelke
Respondent 1-D : Dismissed vide Court's order dated 09/04/2007.
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: May 09, 2017
...

ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment of the Industrial Court dated 31.8.2001, by which, the Complaint filed by the deceased respondent has been partly allowed and he has been granted wages for the period of December 1991 till 7.8.1992 as per Circular dated 16.10.1991.

2. This petition was admitted on 27.11.2001 and the impugned judgment of the Industrial Court was stayed. Since the original complainant had passed away, notice was issued to the legal heirs. Respondent Nos.1A to C and E have been served and the petition is dismissed as against Respondent No.1D. The served respondents have not entered an appearance either in person or through an Advocate.

3. I have considered the submissions of the learned counsel for the petitioner. Issue is as to whether, the benefit of enhancement of age by the Circular dated 16.10.1991 could be available to the deceased respondent, who superannuated on 7.8.1990 at the age of 58 years, as per the law then prevailing. By the said circular, the retirement age was enhanced by two years.

4. In the impugned judgment, the Industrial Court has concluded that the Circular that was introduced on 16.10.1991 contains a clause

wherein those daily wagers or temporaries or casuals, clerks, watchmen etc. who have retired at the age of 58 years and have not completed 60 years, would be considered for re-employment and will be continued till they attain 60 years of age.

5. The said circular is reproduced in the impugned judgment. I have gone through the said Circular, which clearly indicates that those type of workers mentioned in the first paragraph have retired at 58 years of age and if they make an application for continuing till 60 years of age, pursuant to the circular, they will be eligible for such continuation.

6. The impugned judgment also indicates on the basis of the record that the deceased respondent, who retired at the age of 58 years on 7.8.1990, had made the application when he had about 9 months left for attaining the age of 60 years. His application was entertained and he was also subjected to medical examination. Despite being eligible, the petitioner did not allow the application of the deceased respondent even after producing the physical fitness certificate as per the requirement set out in the circular. It is in this backdrop that the Industrial Court directed the petitioner to pay wages from 1.12.1991 till 7.8.1992, which was the period the deceased could have enjoyed in employment. There is no dispute that he would have attained 60 years of age on 7.8.1992.

7. Considering the above and the finding on facts, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

8. It is expected that the petitioner would make the payments of the amounts as directed in the impugned judgment to the wife of the deceased / respondent No.1A - Smt. Sulochana, within a period of 12 weeks from today, failing which the said amount will attract interest @ 6% per annum from the date of the judgment of the Industrial Court.

(RAVINDRA V. GHUGE, J.)

...

akl/d