

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8971 OF 2012
WITH
CIVIL APPLICATION NO.8269 OF 2015

1.The Managing Director,
The Maharashtra State Cooperative
Marketing Federation Limited,
Mumbai 400 009.

2. M/s Bhageerath Fertilizers,
Factory Plot No.4,
Chikalthana I.A. Aurangabad
through it's Manager.

..Petitioners

Versus

1.Bhagwan Bhaurao Dhawale
Age 56 years, Occ. Nil,
R/o Ram Nagar, Cidco,
Aurangabad.

2. Devidas Laxman Rangutte,
Age 58 years, occ. Nil
R/o Mukundwadi, Aurangabad.

3. Nansoob Khanderao Bansod
Age 54 years, Occ. Nil
R/o Post Waghlgaon, Potul Phata,
Aurangabad.

4. Anand Haribhau Kshirsagar
Age 58 years, Occ. Nil,
R/o Chikalthana, Aurangabad.

5. (Sr.No.Omitted)

6. Gangadhar Sakharam Bhosle
Age 56 years, Occ. Nil
R/o Jadgaon, Tq & Dist.Aurangabad

7. Ashok Sukhdeo Garud
Age 56 years, Occ. nil
R/o Sinhagad Colony, Cidco, Aurangabad.

8. Banudas Gamaji Salve
Age 59 years, Occ. Nil
R/o Cikhalthana, Aurangabad
Deceased through his L.Rs.

A. Smt. Kaushilyabai Bhanudas
Salve, age major, occ. nil.

B. Arun Bhanudas Salve
Age major, Occ. Business

C. Anil Bhanudas Salve
Age major, Occ. Nil

D. Bharat Bhanudas Salve
Age major, Occ. Nil

All residents of Chikalthana,
Aurangabad.

9. Sheshrao Yashwantrao Aucharmal
Age 58 years, Occ. Nil
R/o Ashok Nagar, Mhasnathpur,
Aurangabad.

10. N.M.Pathan
Age 58 years, Occ. Nil
R/o Chistiya Colony, Aurangabad.

..Respondents

...

Advocate for Petitioners : Shri Shelke A.A.
h/f Shri Suryawanshi D.N. and Shri Suryawanshi P.D.
Advocate for Respondents : Shri Thole Y.I.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2017

...

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The Petitioners are aggrieved by the judgment and order dated 23.4.2012, delivered by the Industrial Court, Aurangabad by which, Complaint (ULP) No.71 of 2006 filed by the respondents / workmen has been allowed.

5. I have heard the strenuous submissions of the learned Advocates for the respective sides and I have gone through the 11 grounds, raised by the petitioners under paragraph No.5 in the memo of the petition.

6. The petitioners have submitted that in the matter of one employee, namely, Prabhakar Baburao Tekale, he had directly approached the learned Division Bench of this Court in Writ Petition No.4274 of 2009. By judgment dated 20.7.2011, the petition was allowed and the petitioner Prabhakar was granted the benefits of the Voluntary Retirement Scheme (VRS).

7. The said judgment was carried before the Honourable Supreme Court in Special Leave to Appeal and while granting leave upon condoning the delay by order dated 7.5.2013, the Honourable Apex

Court has stayed the judgment of this Court dated 20.7.2011.

8. Shri Thole learned Advocate for the respondents specifically submits that in the abovesaid matter, Prabhakar Tekale has claimed the benefits of the VRS which were denied to him. The said matter pertains to the non payment under the VRS and is not in any way connected with the present proceedings, inasmuch as, the cause of action in these proceedings is totally distinct from the claim of Shri Tekale, which is now before the Honourable Apex Court. Shri Suryavanshi, learned Advocate for the petitioners confirms that the claim of Shri Tekale was only with regard to denial of VRS and the claim of the respondents before the Industrial Court in this case was not with regard to non payment of VRS benefits or denial of applicability of VRS. In this backdrop, I find that the matter before the Honourable Apex Court is with regard to a different cause of action.

9. The admitted facts emerging from the submissions of the learned Advocates and these proceedings are as under:-

- (a) A VRS was floated by the petitioners on 3.4.2004.
- (b) The respondents applied for the same on 3.4.2004.
- (c) The petitioners accepted the applications of these

respondents on 30.4.2004.

(d) Barring respondent Nos.7 and 9, all other respondents were relieved on 30.4.2004.

(e) Respondent Nos.7 and 9 were relieved on 30.5.2004.

(f) Respondent Nos.7 and 9 were paid their wages for the months of April and May 2004 as per the rates / scale of the V Pay Commission Recommendations.

(g) The petitioners issued a circular dated 3.6.2004, making the V Pay Commission Recommendations applicable to all the workmen working in the said department w.e.f. 1.6.2003.

(h) Without setting aside the circular dated 3.6.2004, a new circular was issued on 3.8.2004 making the V Pay Commission Recommendations applicable from 1.4.2004.

(i) The respondents have no grievance about the second circular and its applicability.

(j) All the respondents were in employment till 30.4.2004, barring respondents 7 and 9 who worked till 30.5.2004.

(k) Circular dated 3.8.2004, as per the petitioners, covers these respondents.

(l) Complaint (ULP) No. 71 of 2006 was filed by the respondents before the Industrial Court at Aurangabad claiming difference in pay scale for the month of April as per the V Pay Commission recommendations.

(m) Respondents 7 and 9 were already paid their wages as per the V Pay Commission Recommendations for April and May when they were paid the legal dues.

(n) The claim before the Industrial Court was with regard to over time wages for 144 days and calculation of the VRS based on the salaries admissible to the respondents for April and May 2004 as per the V Pay Commission Recommendations.

(o) The Wage Register was produced by the petitioners at Exhibit C/29.

(p) The Over-time Register was produced by the petitioners at Exhibit C/30.

(q) The witness of the petitioner Shri Jalindar Gaikwad, Factory Manager, admitted in his cross-examination at Exhibit C/25 that the amount of over time as is shown in the Wage Register Exhibit C/29 has not been paid to the original complainants.

(r) Based on the above admitted factors, the Industrial Court concluded that the over time wages for 144 days is proved.

(s) Though VRS benefits were to be paid within 45 days from the acceptance of the application for VRS, same was paid after 419 days.

10. There is no dispute that the Industrial Court, upon perusing

the oral and documentary evidence before it and on the basis of the admissions of the Factory Manager of the petitioner, allowed the complaint and passed the following order:-

“ Complaint is allowed as under:-

It is hereby declared that the respondents have engaged in unfair labour practice under item 9 of Sch. IV of the MRU & PULP Act by not extending the monetary benefits to the complainants as per 5th Pay Commission report.

The respondents are directed to cease and desist from commission of such unfair labour practice.

The respondents are directed to pay to complainants No.1 to 6, 8 and 10 difference of wages as per 5th pay commission report for the month of April,2004.

The respondents are directed to calculate the compensation amount payable to each of the complainants on the basis of recommendations of 5th pay commission in respect of voluntary retirement scheme as per notice dated 3.3.2004 and to pay to each of the complainants, the difference of such compensation amount.

The respondents are further directed to calculate the gratuity payable to each of the complainants in view o the recommendations of the 5th pay commission and to pay to the complainants difference of the gratuity amount after deducting the amount already paid.

The respondents are further directed to pay to each of the complainants over time wages for 144 days.

The respondents are further directed to pay to each of the complainants interest @ 6% per annum on account of delay in payment of monetary benefits for 419 days.

The respondents are directed to pay to each of the complainants their due amount within three months as the complainants have retired long back.

The respondents are directed to pay to each of the complainants Rs.1,000/- towards costs of the proceeding and to bear their own costs.”

11. Though the learned Advocate for the petitioners has strenuously tried to criticize the impugned judgment, he was completely at sea in the light of the deposition of the witness of the petitioners, who was the Factory Manager and a responsible authority, who admitted the claims of the original complainants, keeping in view the documents at Exhibit C/29 and C/30.

12. Considering the above, I do not find that the impugned judgment can be termed as perverse or erroneous or is likely to cause gross injustice to the petitioners in the light of the ratio laid down by the Honourable Apex Court in the cases of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs.

Ram Chander Rai [2003 (6) SCC 682].

13. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

14. The petitioners have deposited an amount of Rs.2,28,416/- on 20.6.2014. By Civil Application No.8269 of 2015, the applicants / original complainants have submitted the details of the outstanding dues, excluding payment of 144 days. These calculations below paragraph No.5 and prayer clauses (a) and (b) of the Civil Application, are admitted by the petitioners / management. However, the amount deposited is not sufficient to take care of the said figures mentioned.

15. As such, the Civil Application is allowed. The persons mentioned in prayer clauses (a) and (b) shall withdraw equal shares of amounts from the amount deposited by the petitioners inclusive of accrued interest. In so far as the compliance of the directions of the Industrial Court are concerned, the petitioner / management shall comply with the said directions by properly calculating the outstanding dues of the original complainants and pay the same to the original complainants / legal heirs as the case may be, within a period of eight weeks from today, failing which the said amount shall further carry interest @ 6% per annum from the date of this judgment

and that portion of interest amount shall be recovered from the personal salary of the petitioners / Managing Director. The said amount of interest will not be paid from the State Exchequer.

16. The original claimants were relieved from service in April and May 2004. The petitioners were under a mandate to pay the VRS amounts as per the Scheme itself within 45 days. What is actually done by the petitioners is that though these original complainants retired upon VRS, the amounts were paid to them after 419 days. Though the Factory Manager admitted the claims of the original complainants before the Industrial Court on the basis of the Wage Register and the Overtime Registers, yet the petitioners dragged the respondents in litigation for about ten years. Interest is also granted by the Industrial Court.

17. Three of the original complainants have died and all the rests are practically in their 70's. Considering the grave hardships and the manifest inconvenience caused by the petitioners to these workers, I deem it proper to award costs of Rs.2,000/- per respondent, which will also be paid by the petitioners within a period of eight weeks from today.

(RAVINDRA V. GHUGE, J.)

...