

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7158 OF 2008

Municipal Corporation of City of Jalgaon
Sardar Vallabhbhai Patel Tower,
Navi Peth, Jalgaon, through it's
Commissioner.

..Petitioner

Versus

1. The State of Maharashtra

2. The Collector, Jalgaon.

3. Laxman Latkan Patil
Age major, Occ. Nil
R/o Plot No.11/1, Mayur Colony,
Pimprala, Tq. and Dist. Jalgaon.

..Respondents

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Advocate for Petitioner : Shri P R Patil
AGP for Respondents 1 & 2 : Shri S P Tiwari
Advocate for Respondent 3 : Shri G A Nagori

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CORAM : RAVINDRA V. GHUGE, J.

Dated: February 03, 2017

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ORAL JUDGMENT:-

1. This matter is heard finally by the consent of the parties and in the light of the judgment delivered by this Court on 16.12.2016, in Writ Petition No. 12153 of 2016 and group of matters.

2. The petitioner / Corporation is aggrieved by the judgment and order dated 17.1.2008, delivered by the Industrial Court, by which, Complaint (ULP) No.23 of 2007 filed by respondent No.3 employee

has been partly allowed. He has been granted regularization after a permanent post of a Driver receives sanction and falls vacant. The petitioner is also directed to pay over time wages of the complainant.

3. Shri Nagori, learned Advocate has strenuously defended the impugned judgment. Contention is that clause 3 of the order clearly indicates that the proposal of the respondent No.3 workman already sent to the Government wherein the Corporation has requested for sanctioning of posts of Driver, would indicate that the Industrial Court has applied the law correctly and the regularization of respondent No.3 is granted only after the post is sanctioned.

4. To the extent of clause 4 of the operative part of the order, Shri Nagori submits that several pieces of evidence were brought before the Industrial Court. The Government Resolution dated 16.8.2004 permitting the payment of over time is not disputed. The Industrial Court has, therefore, concluded that the Corporation should pay the over time and such direction is neither erroneous nor perverse.

5. I find that in so far as the issue of regularization of respondent No.3 is concerned, in identical group of matters, with regard to Drivers working with the Corporation, this court by judgment dated

16.12.2016 has issued the following directions below paragraph No.27.

“27. The writ petitions filed by the litigating drivers bearing Writ Petition Nos.12153/2016, 11342/2016, 11343/2016, 11344/2016, 11345/2016, 11346/2016, 11347/2016, 11348/2016, 11349/2016, 11350/2016, 11351/2016, 11352/2016, 11353/2016, 11354/2016, 11355/2016, 11500/2016, 11514/2016, 11515/2016, 12163/2016, 12195/2016 are partly allowed by modifying clause (3) of the impugned order as under :-

[a] The Corporation shall regularize the services of these litigating drivers based on their seniority as set out in Exhibit X in so far as the 48 posts are concerned.

[b] The above regularization shall be from the dates on which each of these posts has fallen vacant and that shall be the deemed date of regularization of these drivers, who would then be entitled to all consequential monetary benefits from that deemed date.

[c] In so far as the remaining litigating drivers are concerned as well as those drivers, if any, who are not before the Court, the Corporation shall forward a complete proposal of all such drivers to the Urban Development Department, State of Maharashtra within a period of 12 weeks from today for seeking creation of posts, if none are available and for grant of regularization as per their seniority.

[d] The proposals received by the concerned Department of the State Government shall be dealt with within a period of 16 weeks thereafter.

[e] Until these litigating drivers are not regularized, the Corporation shall be precluded from engaging fresh hands on vacant posts of Drivers.

[f] All these drivers on daily wages would be entitled for parity in pay scale on the basis of the minimum pay scale prescribed by the Pay Commissions considering the 6th and the 7th Pay Commission, if applicable or at par with the basic pay scale payable to the regular comparable drivers, keeping in view the conclusions of the Hon'ble Apex Court in the State of Punjab Case (supra).

[g] In the event of any grievance of these drivers as regards shortfall in payment, they are at liberty to voice their grievance before the appropriate forum for recovery of the said amount."

6. Considering the above, the case of the present respondent No.3 can also be considered in the same manner as above, and the petitioner / Corporation shall accordingly implement the above directions with regard to respondent No.3 as well.

7. In so far as the claim of over time is concerned, there is no

dispute that respondent No.3 has put forth his claim for over time for the period 2003 onwards when he was posted on deputation with respondent No.2 District Collector, Jalgaon. His claim is with regard to the period when he was on deputation. It is trite law that unlike transfer, when an employee is on deputation, the actual employer is liable to pay the wages of such an employee. If over time work is performed by respondent No.3, with the District Collector, ultimately the corporation would have to pay the over time by seeking reimbursement of the said amount from the Collector's office or under such Rules as may be govern the said fact of deputation.

8. However, I find from the impugned judgment, that though the applicability of the Government Resolution, dated 16.8.2004 cannot be disputed, the original complainant was obliged to bring before the Industrial Court specific instances of the dates and the time during which he has worked over time. Overtime wages are not to be calculated on assumptions and presumptions. Specific documentary evidence is required to be placed on record so as to calculate the exact date and time when the employee had worked over time. These aspects are missing in the impugned judgment. Consequentially, though clause (4) of the impugned order deserves to be quashed and set aside.

9. Considering the above, this petition is partly allowed. The

declaration of ULP against the Corporation under Clause (2) of the order is quashed and set aside. The direction under Clause (3) stands modified as above. The direction at clause (4) is quashed and set aside, though by granting liberty to respondent No.3 to raise an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 setting forth the particulars in details about the claim of over time. In the event such an Industrial dispute is raised, the Corporation as well as the Collector shall endeavour to resolve the said matter in conciliation before the competent authority under the Industrial Disputes Act. If the conciliation fails, the appropriate Government upon receiving the failure report, may decide as to whether the matter deserves to be referred for adjudication to the Industrial Tribunal.

10 Needless to state, no limitation is prescribed under Section 2(k) for raising an Industrial Dispute. The time spent by respondent No.3 before the Industrial Court and this Court shall be a good ground for considering the industrial dispute.

11. Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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