

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 11908 of 2016

District : Nanded

Nanded-Waghala City Municipal
Corporation,
Through its Commissioner,
Laxman s/o. Kashiram Choure,
Age 47 years,
Occupation Service as
Assistant Commissioner (Est.),
R/o. Nanded,
Taluka & District Nanded.

.. Petitioner
(Original
respondent)

versus

Sahebrao s/o. Bhagojirao Jadhav,
Age 51 years,
Occupation Pump Operator,
R/o. Kabra Nagar Jal Shuddhikaran
Kendra, Nanded,
Taluka & District Nanded.

.. Respondent
(Original
complainant)

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Mr. R.K. Ingole Patil, Advocate, for the petitioner.

Mr. S.B. Kadu, Advocate, for the respondent.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 24TH FEBRUARY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. The petitioner is aggrieved by the judgment

of the Industrial Court dated 15.07.2016 by which Complaint (ULP) No. 07/2012 filed by the respondent was partly allowed and he was granted the pay scale of Rs. 5500-175-9000 after concluding that a similarly situated employee Mr. N.M. Panchal was also earning the same scale and has subsequently retired.

03. I have considered the submissions of the learned Advocates.

04. While issuing notice to the respondent, I have recorded submissions of the petitioner in my order dated 05.12.2016 as follows :-

"01. The Petitioner / Municipal Corporation is aggrieved by the judgment of the Industrial Court dated 15.07.2016 by which Complaint (ULP) No.7/2012 filed by the Respondent has been partly allowed and he has been granted the pay scale of Rs.5500-175-9000 from 20.01.2012 as a Shift Engineer.

02. The Petitioner points out from Section 51 of the Maharashtra Municipal Corporations Act that unless the Municipal Commissioner prepares a statement setting forth the number, designations and grades of the other officers and servants and the amount and nature of the salaries, fees and allowances which he proposes should be paid to them, the Standing Committee does not have the authority to grant the pay scale by itself.

03. It is further pointed out from sub-sections (3) and (4) and the explanation below Section 51 that any revision of pay scale or pay structure or

grant of special pay or grade or revision of allowances or change in designation, would amount to creation of a new post which cannot be done by the Standing Committee unless the permission to do so has been accorded by the State Government. Yet, the Industrial Court has granted the pay scale to the Respondent.

04. It is further pointed out that the Respondent was a Shift Engineer and he cannot prefer his ULP complaint. He was neither a workman under Section 2(s) of the Industrial Disputes Act, 1947 nor an employee under Section 3(5) of the MRTU & PULP Act, 1971. Yet the complaint has been entertained by the Industrial Court.

05. It is then submitted that the Respondent has been granted the said pay scale only because Mr. N.M. Panchal, who retired as Shift Engineer, was also paid the said scale. He was also compared with another Shift Engineer Mr. Beralikar. Though the Industrial Court noted that the State Secretariat is yet to take a decision on the pay scale, the complaint was allowed.

06. I have considered the submissions of the learned Advocate for the petitioner.

07. Section 51 of the Maharashtra Municipal Corporations Act along with its proviso and explanation reads as under :-

"51. Number, designations, grades, etc. of other municipal officers and servants.

(1) Subject to the provisions of sub-section (4), the Standing Committee shall from time to time determine the number, designations, grades, salaries, fees and allowances of auditors, assistant auditors, officers, clerks and servants to be immediately subordinate to the Municipal Chief Auditor and the Municipal Secretary respectively.

(2) *The Commissioner shall, from time to time, prepare and bring before the Standing Committee a statement setting forth the number, designations and grades of the other officers and servants who should in his opinion be maintained, and the amount and nature of the salaries, fees and allowances which he proposes should be paid to each.*

(3) *The Standing Committee shall, subject to the provisions of sub-section (4), sanction such statement either as it stands or subject to such modifications as it deems expedient.*

(4) *No new posts of the officers and servants of the Corporation shall be created without the prior sanction of the State Government :*

Provided that, the decision of the Government on a proposal complete in all respects, received from the Corporation for creation of posts shall be communicated to the Corporation within ninety days from the date of the receipt of such proposal by the Government.

(5) *Nothing in this section shall be construed as affecting the right of the Corporation or of the Commissioner to make any temporary appointment which it or he is empowered to make under section 53.*

Explanation.- Any revision of pay scale or pay structure or grant of special pay, or grade, or revision of allowances (excluding dearness allowance) or change in designation shall be deemed, for the purposes of sub-section (4), to be the creation of a new post."

08. The Respondent, though was a Shift Engineer, preferred the ULP complaint and mentioned his status as "Pump Operator" since the Pump Operator is a workman. The complaint was entertained on the basis that he was a Pump Operator.

09. The Petitioner by communication dated 25.11.2016 has informed the Respondent, who is working with the Petitioner, about the date of hearing in this petition. Yet, no appearance has been caused.

10. In the light of the above, issue notice before admission to the Respondent, returnable on 10.01.2017.

11. Until further orders, the impugned judgment of the Industrial Court, if not already implemented till today, shall stand stayed."

05. There is no dispute that the pay scale of Rs. 5500-9000 was granted to the respondent since the Standing Committee of the Corporation passed a resolution bestowing the said scale on him. It is equally undisputed that Section 51 of the Maharashtra Municipal Corporations Act reproduced above would not empower the Standing Committee to revise the salary structures and grant pay revisions to officers / employees of their own choice.

06. By communication dated 09th July, 2014 the Commissioner had approached the Principal Secretary of the Urban Development Department requesting for guidance on this issue. He pointed out that the Junior Engineer is entitled for the pay scale of Rs. 5500-9000 as per the Vth Pay recommendations and the Shift Engineer is entitled for the pay scale of Rs. 4500-7000. He, therefore, pointed it out that the Standing Committee has passed a resolution revising the pay scale of the respondent who was not even a Junior Engineer. By communication dated 28.01.2015, the Urban Development Department informed the Commissioner of the petitioner - Corporation that such pay revision cannot be permitted.

07. It is apparent from the view taken by the Industrial Court in the impugned judgment in

paragraph 09 that the respondent - original complainant was appointed in place of Shri N.M. Panchal who had retired. By resolution dated 13.10.2011 passed by the competent Committee, the respondent was promoted from Pump Operator to Shift Engineer. It was specifically mentioned in the resolution Exhibit U-20 dated 26.08.2010 that the promotion of the respondent to the post of Shift Engineer will not amount to creating additional economical burden upon the Corporation.

08. The Industrial Court observed that, *'The claim of complainant of pay scale of Rs. 5500-9000 seems to be bona fide'*. It is further observed by the Industrial Court that *'The complainant is also entitled for the said pay scale which was being paid to Mr. N.M. Panchal shown in the list of Junior Engineer. Said Mr. Panchal was standing second in the seniority list dated 15.12.2007 at Exhibit U-25. The pay scale of the said post is mentioned as Rs. 5500-9000. Therefore, this Court has no hesitation to hold that the Complainant is entitled for the pay scale of Rs. 5500-9000 as mentioned in the seniority list Exhibit U-25'*.

09. It is quite evident that Mr. Panchal was a Junior Engineer and the respondent was a Pump Operator. He was promoted as a Shift Engineer and was never promoted as Junior Engineer in place of Mr. Panchal. Mr. Berlikar was appointed in place of Mr. Panchal and thereafter the respondent was promoted as a Shift Engineer.

10. The record reveals that the respondent - complainant made a request for pay revision from

4500-7000 to Rs. 5500-9000 and the said request was accepted by the Standing Committee of the Corporation. Apparently, when this is impermissible in law, the Standing Committee could not have usurped jurisdiction and granted the said pay scale of a Junior Engineer to the respondent - complainant.

11. In the light of the above, it is quite evident that the Industrial Court had turned a blind eye to the provisions of the law and the factual position that Mr. N.M. Panchal was never a Junior Engineer and was not drawing the salary in the pay scale of Rs. 5500-9000.

12. In this view of the matter, the impugned judgment of the Industrial Court is quashed and set aside. Complaint (ULP) No. 07 of 2012 stands dismissed and this Petition is allowed.

13. It is informed that a proposal is pending with the appropriate Government. One post of Shift Engineer is shown vacant. The respondent - complainant is said to be the only qualified employee presently in the service of the Corporation who can be said to be entitled for a regular scale of a Shift Engineer.

14. Since the above said proposal is pending, the competent authority would decide the said proposal on its own merits and the dismissal of the complaint of the respondent would not be an

impediment for considering his case on its own merits.

15. Rule is made absolute in the above terms.

(Ravindra V. Ghuge)
JUDGE

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