

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.6894 OF 2005

- 1) Narhar s/o Rajeshwarrao Kashikar,
Age 56 years, Occ Retired,
R/o House No. 91, Gajanan Colony,
Garkheda area, Aurangabad.
- 2) Pandurang s/o Laxmanrao Dabir,
Age 52 years, Occ Retired,
R/o 4-8-85, Tilak Path,
Aurangabad.
- 3) Mohd. Salauddin s/o Mohd. Kasim,
Age 54 years, Occ Retired,
R/o Rashidpura, T.V. Center Road,
Near Ganesh Colony, Aurangabad.
- 4) Sahebrao s/o Yeshwantarao Jadhav,
Age 53 years, Occ Retired,
R/o V.H. 44, Vishnu Nagar,
Behind Akashwani, Jalna Road,
Aurangabad.

PETITIONERS.

VERSUS

- 1) The State of Maharashtra,
Through Principal Secretary,
Industries Engery and Labour Dept.
Mantralaya, Mumbai – 32.
- 2) The Managing Director,
Marathwada Development
Corporation Ltd.Vikas Bhavan,
Dr. Rajendra Prasad Road,
Aurangabad. 431 001.

- 3) Working Director,
Dairy Development Corporation
of Marathwada Ltd.,
Vikas Bhavan Dr. Rajendra
Prasad Road, Aurangabad.

RESPONDENTS

.....
Shri F.R. Tandale, Advocate for Petitioners.
Shri R.V. Dasalkar, A.G.P. for the State.
Shri Rajendra Deshmukh, Advocate for Respondent Nos. 2 & 3.

.....

CORAM: **T.V. NALAWADE AND**
SUNIL K. KOTWAL, JJ.

DATED : **3rd April, 2018**

JUDGMENT : (Per Sunil K. Kotwal J.)

1) By filing this Writ Petition under Article 226 of the Constitution of India, Petitioners have sought direction to the Respondent No. 2, to pay time bound higher pay scale with effect from 01/01/1997, with consequential reliefs and for other benefits. The petitioners have also sought direction to treat their date of the increment as 1st January of every commencing year. The respondent No. 1 is the State of Maharashtra, Respondent No. 2 is the Marathwada Development Corporation Ltd., Aurangabad (hereinafter referred to as "M.D.C.") and the Respondent No. 3 is the Dairy Development Corporation of Marathwada Ltd., Aurangabad (For Short "D.D.C.M."). Both are the Government undertaking Companies.

2) Undisputed facts in between the parties are that

initially petitioners used to wish to work as Service Assistants in the Respondent No. 3 Company in the pay scale of Rs. 260-10-390-15-495. By way of promotion they were placed on higher pay scale of Rs. 365-15-500-20-760 w.e.f. 01/01/1985.

3) Initially petitioners were sent on deputation to the Respondent No. 2 Company in the year 1986. Later on, they were absorbed permanently in the Respondent no. 2 Company on 26/10/1989. On 08/06/1995 as per Government Resolution, a Scheme of "**Time Bound Higher Pay Scale after completion of continuous service of twelve years**" was brought into effect by the Government. That was adopted by the Respondent No. 2 Company.

4) The contention of the learned counsel for the Petitioners is that as per service record from 01/01/1985 the Petitioners have completed continuous twelve years service on 01/01/1997 and thereafter, they are entitled to the higher pay scales w.e.f. 01/01/1997. However, despite repeated representations, respondent No. 2 Company did not award the benefit of the Scheme of Higher Pay Scale. Learned Counsel for the Petitioners submits that, even Respondent No. 2 has not taken any action towards their request to change the date of increment w.e.f. 1st January of the year. He prayed to grant the above said relief.

5) In reply, the learned counsel for Respondent Nos. 2 and 3 submits that because D.D.C.M. was to be closed down, only on humanitarian ground, petitioners were absorbed with Respondent No. 2 Company as an alternative employment. Initially no posts were available readily to be given to the petitioners and therefore, their services were shown as on deputation. However, subsequently after the request of Petitioners their services were confirmed as per the Board Meeting Resolution dated 23/08/1989 and accordingly the Petitioners were absorbed on permanent basis on 26/10/1989. In the said appointment order it has been clarified that the appointments of the petitioners were fresh appointment and their past services with Respondent No. 3 were considered only for calculating gratuities and for Earned Leaves.

6) The next contention of the learned counsel for the Respondents is that in the appointment order it was made clear that Petitioners will not be entitled for any benefit for their previous services in D.D.C.M. The appointments of the petitioners being fresh, the twelve years services of the Petitioners can be counted only from 26/10/1989 and therefore, the Petitioners cannot claim higher pay scale w.e.f. 01/01/1997. Though the Petitioners have completed their twelve years services on 25/10/2001, by that time due to financial crises, the

Board of M.D.C. had taken decision on 22/03/2001 to revoke the said earlier Resolution of giving higher pay scale after completion of twelve years of services. Therefore, after 22/03/2001 Respondents did not give higher pay scale to anybody from his Establishment. The learned counsel for the Respondents submits that therefore none of the prayer of the Petitioners can be allowed.

7) With the help of learned counsels for both parties, we have gone through the order of deputation dated 18/08/1986 which shows that initially Petitioners were transferred on deputation to Respondent no. 2 Company on their own pay scale w.e.f. 1st August 1986. Subsequently, on 26/10/1989 the orders of absorption were issued on the following terms and directions :

- 1) The appointments of the Petitioners would be treated as fresh one and they will not be entitled for any benefit for their previous services in D.D.C.M.
- 2) Services of the Petitioners put in D.D.C.M. will be taken into consideration only for the purpose of calculating gratuities and for Earned Leaves on their credit in D.D.C.M.
- 3) The Petitioners will be treated as Junior most in the pay scale of 1400-2300 than those of M.D.C. employees who previously were in this scale in General Cadre.

Other terms and conditions are not relevant for the decision of this dispute.

8) Thus, after going through the above said appointment orders of the Petitioners, it become crystal clear that the appointments of the Petitioners on the Establishment of Respondent No. 2 Company on 26/10/1989 were fresh and they were not entitled to claim any benefit of their past services rendered in D.D.C.M. Therefore, obviously from 26/10/1989 the Petitioners will complete continuous twelve years service on 25/10/2001. In the circumstances, the Petitioners cannot claim higher pay scale with effect from 01/01/1997 as claimed by them. Therefore, the main relief of the Petitioners regarding the grant of higher pay scale w.e.f. 01/01/1997 cannot be awarded.

9) However, it cannot be ignored that as per the written reply submitted by the Respondents, they have extended the benefit of higher pay scale to the other employees of Respondent No. 2 Company. Therefore, only on the ground of financial crisis the Respondent No. 2 cannot deny the benefit of higher pay scale to the Petitioners after completion of their continuous twelve years services in Respondent No. 2 Company on 25/10/2001. Thus, direction needs to be given to the Respondent No. 2 to give benefit of higher pay scale to the Petitioners from the date of completion of their continuous twelve years services which is to be counted from 26/10/1989.

10) However, as the date of appointment of the Petitioners is 26/10/1989 in Respondent No. 2 Company, their date of increments cannot be changed from first of October from 1990 onwards. Thus, the second prayer of the Petitioners cannot be considered in their favour. In the circumstances, this petition deserves to be partly allowed.

11) Hence the following order.

ORDER

- 1) The Petition is partly allowed.
- 2) The Respondent No. 2 Marathwada Development Corporation, Aurangabad is hereby directed to see that the benefit of the Government Scheme of giving higher pay scale after completion of twelve years services on the post is given to the Petitioners. Their twelve years period is to be counted from October 1989 and accordingly the pay is to be fixed.
- 3) The arrears of the pay are to be calculated on that basis and pension is also to be fixed accordingly. The arrears are to be paid within six months.
- 4) Rule is made absolute in those terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE