

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10801 OF 2017
(Sanjaykumar Lalujirao Wakude Vs. Maharashtra Rajya Marg
Parivahan Mahamandal and another)

Mr.L.S.Mahajan, Advocate for the petitioner.
Mrs.R.D.Reddy, Advocate for respondent Nos.1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 20/06/2018

PER COURT :

1. The petitioner is partly aggrieved by the judgment and order delivered by the Industrial Court dated 17/12/2016 by which Complaint (ULP) No.19/2015 has been partly allowed. Grievance of the petitioner is restricted to clause 4 of the order by which the Industrial Court, while directing the respondent/Corporation to fix the pay scale of the petitioner on the post of Stenographer (Jr.) w.e.f. 03/07/1997, has directed grant of the monetary benefits alongwith interest @ 9% p.a. on the difference of amounts from 09/02/2015, which is the date of the filing of the ULP complaint.

2. Learned Advocate for the petitioner has strenuously criticized the impugned judgment to the above extent. He submits that while being a Stenographer (Jr.) after being appointed in a Special Drive for

appointing candidates from the backward class, he was transferred to the Latur Division by General Standing Order No.503 Part-94. As the post of Stenographer (Jr.) was not available at Latur, he was accommodated as a Steno-Typist w.e.f. 03/07/1997 at Latur. He joined duties on transfer on 14/07/1997 and started working as a Steno Typist. He started making representations for being treated as a Stenographer (Jr.) and after almost 18 years, he filed the ULP Complaint before the Industrial Court praying for proper pay fixation as a Stenographer (Jr.) Grade from 03/07/1997. Grievance is that the Industrial Court partly allowed the complaint and directed that the pay scale would be notionally fixed on the post of Stenographer (Jr.) w.e.f. 03/07/1997 and yet the difference of salary is granted from the date of filing of the complaint on 09/02/2015.

3. Learned Advocate for the Corporation submits that the Corporation has implemented the impugned judgment and followed all the directions as are issued by the Industrial Court. She, however, submits that this petitioner had specifically prayed for a request transfer to Latur due to his personal reasons. He was aware that the post of Stenographer (Jr.) was not available at Latur and he would have to work on a lower post of Steno Typist. He agreed to accept the said post since he desired to work in Latur for personal reasons. On

this understanding, his request transfer application was accepted with the condition that he would accept the post of Steno Typist.

4. Considering the undisputed fact situation as above, I find that the petitioner is fortunate that the Management has not challenged the impugned judgment on the aforesaid reason/ground. Once an employee requests for a transfer for personal reasons and knowing fully well that the position that he occupies is not available at the place of transfer and he sacrifices the said position for personal gain of seeking a transfer for personal reasons, he cannot make a grievance after such request transfer application is accepted. The Hon'ble Apex Court in the matter of State of Punjab Vs. Krishan Niwas, [AIR 1997 SC 2349] has concluded that after an employee accepts a particular order of fresh employment and joins duty after accepting the said offer, he cannot challenge the said order after accepting employment and earning salary by working on the said post. In the instant case, the respondent wanted his personal reasons to be accepted and for his personal comfort, he agreed to work as a Steno Typist and joined the place of his choice. Challenging such an order later on and that too after 17 to 18 years, cannot be entertained. I am, however, closing this issue since the Corporation has accepted the directions of the Industrial Court and

have implemented the same without any demur.

6. Learned Advocate for the Corporation relies upon the judgment of the Hon'ble Apex Court in the matter of M.R.Gupta Vs. Union of India and others [(1995)5 SCC 628] in which it has been observed in paragraph No.5 as under :-

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc.

would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.”

6. Considering the above, the impugned order cannot be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)