

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

901. WRIT PETITION No. 545 of 1999

Municipal Council,
Shirpur Warwade Taluka Shirpur Dist. Dhule
through its Chief Officer.

...Petitioner

VERSUS

1. Shrikrishna Baliram Vaidya,
822, Brahman Tek, Shirpur Taluka Shirpur Dist. Dhule
(Died) through legal representatives:

1/A. Smt. Shailaja W/o Shrikrishna Vaidya, age 55 years

1/B. Prashant S/o Shrikrishna Vaidya, age 29 years

1/C. Prasanna S/o Shrikrishna Vaidya, age 28 years

1/D. Prachi D/o Shrikrishna Vaidya, age 30 years

All occupation nil R/o near Brahmantek
Taluka Shirpur Dist. Dhule

2. The Director,
Municipal Administration, Mumbai.

...Respondents

*Mr. D.S. Bhagat, Advocate for petitioner.
Mr. K.C. Sant, Advocate for respondents.*

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. The petitioner-Municipal Council is aggrieved by the judgment and order dated 5th August, 1998 delivered by the

Industrial Court, Nashik, vide which, Complaint (ULP) No. 323 of 1993, filed by the deceased respondent, a doctor, was allowed. He was granted benefits of the Fourth Pay Commission and was directed to be placed in the corresponding grade recommended by the 4th Pay Commission for Class-II Medical Officers, with effect from 1st April, 1986.

2. I have heard the learned Advocates for the respective sides, at length.

3. Three issues emerge from this proceeding. Firstly, whether the deceased respondent doctor would fall within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 read with the definition of 'employee' under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ? The second issue would be, as to whether he was entitled to be placed in Grade II for earning the pay grade as recommended by the 4th Pay Commission ? Thirdly, whether, in the absence of any objection by the Respondent, the Labour Court or Industrial Court is precluded from considering the status of the complainant ?

4. The litigating sides have cited the following judgments:

- (a) *H.R. Adyanthya Vs. Sandoz (India) Ltd , 1994 AIR 2608,*
- (b) *M.M. Wadia Charitable Hospital Vs. Dr. Umakant Ramchandra Warekar, (1997) ILLJ 549 Bom,*
- (c) *Shantanu G. Joshi Vs. Hindustan Antibiotics Limited, LAWS (BOM)-2000-6-26*
- (d) *N.M. Wadia Charitable Hospital Vs. Dr. Ashok Vyankatesh Apate, 2004(6) Bom CR 10.*

5. Though the judgment delivered by the Hon'ble Apex Court in the matter of *Sandoz (India) Ltd*, (supra), would be restricted to the case of medical representatives, it is now settled that considering the amendment to Section 3(5) of the M.R.T.U. & P.U.L.P. Act, 1971, a medical representative or a salesman covered by the definition under Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976, would also be an employee under the 1971 Act.

6. It is an admitted position that neither had the petitioner council raised an objection before the Labour Court that the respondent/original complainant is not a 'workman', nor had the Labour Court applied its mind to the pleadings of the parties and had not framed an issue as regards the status of the complainant.

7. It requires no debate that even if a respondent in a ULP Complaint does not raise any issue as regards the status of a

complainant, in my view, a complaint before the Labour Court or the Industrial Court, as the case may be, would be maintainable only if the complainant is a 'workman' and the respondent is an 'industry'. Notwithstanding, whether any of the parties have disclosed the status of a complainant or the respondent has raised an objection, it would be the inherent power and duty of the Labour Court or the Industrial Court to assess whether it could exercise its jurisdiction in a complaint considering the status of a complainant and the respondent. Unless the complainant is a 'workman' and the respondent is an 'industry', a complaint would be untenable. In this matter, as a consequence of the silence of the parties and the issue of 'workman' having not been framed, neither of the parties led any evidence as regards the status of the original complainant. The Labour Court mechanically concluded that the complainant is a 'workman'.

8. It is a settled law, as is held by this Court in the matter of *M.M. Wadia Charitable Hospital Vs. Dr. Umakant Ramchandra Warekar*, (supra), that there cannot be a straight-jacket formula to conclude that a 'doctor' is a 'workman' or not. There are only two categories to be considered by the Labour Court, Industrial Court or the Tribunal. Either the complainant would be a 'workman' or would not be a 'workman' if he falls in the category

of 'manager' or a person exercising managerial function.

9. Whether a doctor has acquired special skills or is a super speciality expert, would be significant. What is required to be seen on the basis of the evidence on record is, as to whether such a doctor was exercising supervisory and managerial functions. It is, thus, held in the matter of *Dr. Umakant Ramchandra Warekar*, (supra), that the question is required to be decided on the facts of a given case.

10. In the case of Dr. Ashok Vyankatesh Apate, (supra), this Court did not interfere with the findings of the Labour Court, Latur, holding that Dr. Apate was within the definition of 'workman'. However, this Court had considered the evidence on record and had concluded that there was no pleading to question the status of the doctor and no evidence was adduced.

11. I am, however, of the firm view that even if the litigating sides are silent in their pleadings, it would not vest the Labour Court with the jurisdiction to entertain the complaint. The Labour Court/Industrial Court can by itself cast an issue in order to verify the status of the complainant. This may not apply in every case. If the Court, itself has some doubt as to whether the complainant is a 'workman' or the respondent is an 'industry', it

may frame an issue to decide this aspect. I am in agreement with the view taken in the case of *Dr. Ashok Vyankatesh Apate*, (supra), that evidence has to be led in order to assess the status of the complainant. The learned Division Bench of this Court has concluded in the matter of *Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Ltd., Akola, 2010(3) Mh.L.J. 434*, that the nature of duties would decide the status of the complainant.

12. In the instant case, though I could have remitted the matter to the Industrial Court by framing an issue and directing the parties to lead evidence, such exercise would not be possible on account of the fact that the case dates back to 1993, which is 26 years ago and more so, in view of the fact that the respondent has passed away and his legal representatives are now on record. It is also an admitted position that he was a graduate in *Ayurvedik* Science and not in any form of a Medical Course as like M.B.B.S. So also, he has now passed away. As such, I do not find it appropriate to remand the matter to the Industrial Court.

13. In the above backdrop, what is now required to be seen is, whether the deceased employee was entitled to be placed in the grade II salary scale. There is no dispute in the light of the communication of the Deputy Director of the

Municipal Administration, Maharashtra State, dated 7th January, 1985 addressed to the Regional Directors of the Municipal Administration that those *Ayurvedik* Graduates, who have worked for seven years in the particular category, would be entitled for such a pay scale. It is also admitted that the deceased had worked for six years and seven months in such category. It was under fortuitous circumstances that the medical facility, in which he was deployed, was closed down, just before he had completed 7 years and he was then moved into a section, which dealt with Family Planning and Birth Control Program and he continued in the employment of the petitioner.

14. It is in these peculiar facts that I find that the duration of work performed by the deceased for 6 years and 7 months could be rounded off and he could be deemed to have completed seven years as a Medical Officer in the particular category. The Industrial Court has granted the deceased the benefits of Class II grade as per the 4th Pay Commission recommendations from 1st April, 1986, which is after completion of 7 years of the period of service by the deceased. In view of the above, I am not causing an interference in the impugned judgment, though the issue as to whether the complainant was a 'workman' or not, is kept open.

15. This Court had stayed the impugned judgment by order dated 8th February, 1999 while admitting the petition and subsequently, the interim relief granted was continued. The learned Counsel for the legal representatives of the deceased employee submits, on instruction, that if the Municipal Council calculates the entire monetary dues payable to the deceased within a period of 45 days, the legal representatives may not insist on interest. If the Municipal Council delays the payment, then interest may be granted.

16. I find that the legal representatives have made a fair submission and, therefore, if the Municipal Council calculates all the monetary dues payable to the widow and makes the said payment, within a period of 45 days from today, the said amount would not carry interest. However, if such a payment is not made within the period of 45 days, the entire amount shall carry interest at the rate of 6% p.a. from the date of the judgment of the Industrial Court, which is 5th August, 1998. All dues are to be paid to the widow-respondent No.1-A. Respondent No.2, Director of Municipal Administration would sanction the payment of monetary dues.

17. Needless to state, the pension would also be

recalculated by the petitioner and the difference of the pensionary benefits would be paid to the widow-respondent No.1-A, within a period of 90 days from today, and the pensionary benefits as per the recalculations would also be extended to her within the said period.

18. This petition is, therefore, disposed off. Rule is discharged.

19. The record and proceedings be returned to the Industrial Court, Nashik.

(RAVINDRA V. GHUGE)
JUDGE

Madkar