

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1590 OF 2006

1. The State of Maharashtra
Through the Deputy Director
of Health Services, Latur Circle,
Latur.

2. The Junior Scientific Officer,
District Public Health Laboratory,
Latur District, Latur.

..Petitioners

Versus

Latabai Madhavrao Chikte
Age 46 years, Occ. Service
R/o Ambedkar Chowk, Latur

..Respondent

...
AGP for Petitioner : Shri Yadav (Lonikar) S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 11, 2019

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ORAL JUDGMENT:-

1. Despite adjourning this matter on 25.1.2019 and 8.2.2019 and despite showing this matter on the Board for passing orders, none has appeared on behalf of the respondent, though an appearance is entered by an Advocate. The petition is of 2006 and the Original ULP Complaint is of 2003. The respondent is almost 60 years of age today and must have attained the age of superannuation. It is in this backdrop that I am hearing this matter, in the absence of the respondent.

2. The petitioner / Health Department has challenged the judgment of the Industrial Court, dated 18.10.2005, delivered in Complaint (ULP) No.1112 of 2003 (New Number 344 of 2004), by which, the Industrial Court has granted higher pay scale benefits to the respondent, by virtue of the Government Resolution dated 11.2.2000. The grievance of the respondent before the Industrial Court was that the said benefits were subsequently taken away by the petitioners on the ground that the respondent was not entitled to such benefits. She was, therefore, granted a slightly lower pay scale. The Industrial Court concluded that the reduction of pay scale was bad in law and the respondent is entitled for the benefits of the said Government Resolution.

3. Challenge by the petitioners is on the ground of, firstly, that the petitioner is not an 'industry' under Section 2(j) of the Industrial Disputes Act (ID Act) and secondly, the respondent does not fit in to the qualifying conditions set out in the Government Resolution as she was not appointed as a Lab Cleaner as in 1985.

4. After considering the interim order passed by this Court on 15.11.2006 and upon considering the facts and circumstances of the case, I am not dealing with the aspect of whether the petitioner /

Health Department is an 'industry' or not since the petitioner has already attained the age of 60 years and the age of superannuation is 58 years. Referring the matter to the Industrial Court, Latur for reconsidering the issue of whether the petitioner is an 'industry' would cause manifest inconvenience to the respondent, who has worked from 1984 and has superannuated. It is in this backdrop, that I find it appropriate to give a quietus to this litigation. The said issue of law is kept open to be considered in an appropriate proceeding.

5. I am, therefore, dealing with the aspect of whether the respondent was eligible to be extended the pay scale as per the Government Resolution dated 11.2.2000.

6. I find that the following three conditions have been set out in the Government Resolution as an eligibility criteria:-

(a) Those workers who are in service from 31.12.1985 OR

(b) Those who have completed 30 years of age on 29.1.1990 OR

(c) Those who have acquired education at SSC or Pre-SSC level (In so far as Laboratory Attendant is concerned, he/she

must have acquired education in Physics and Chemistry).

7. Admittedly, the respondent was appointed on 2.1.1984, as a Sweeper in the Civil Hospital at Latur. Thereafter, she was transferred in 1986 to the District T.B. Center at Latur. From 30.5.21992, she was transferred as a Laboratory Cleaner (Swacchak) to the District Health Laboratory, Latur. Contention of the petitioner is that she has started working as a Laboratory Cleaner for the first time in 1992. The contention, therefore, is that the respondent has not qualified under any of the conditions.

8. I find that the said Government Resolution is, to some extent, vague and ambiguous since, in the title head of the Government Resolution it is stated that it would apply to Laboratory Attendants and Laboratory Cleaners. Besides the title, in the entire Government Resolution shown to the Court at Page No.21 onwards, the word, Laboratory Cleaner (Swacchak) has not been used at any place. The only word used is 'Laboratory Attendant (Parichar)'. If the second condition of an employee completing 30 years of age on 29.1.1990 is concerned, I find that the respondent was 31 years' old on the said date. However, it is unclear as to whether that condition would actually apply to only those employees, who have been appointed as Laboratory Cleaners or whether it would apply to all Class IV

Sweepers. If it is presumed that the Government has introduced the Government Resolution for the benefits of the Laboratory Attendants and Laboratory Sweepers and have inadvertently failed to use the word 'Sweepers' wherever the word 'Laboratory Attendants' appears, the benefit could be extended to the Sweepers as well.

9. The interpretation of the State, which is evident from their notice dated 16.9.2003, issued to the respondent, pursuant to the disposal of her Original Application No.106 of 2002, decided by the learned Maharashtra Administrative Tribunal on 12.8.2003, is that unless an employee is appointed as a Sweeper in the Laboratory, no other Sweeper would be eligible for the benefits of the said Government Resolution, even if such other Sweepers have been transferred to the Laboratory as like the respondent. The contention of the petitioners does not find support in the Government Resolution so as to conclude that unless a person is appointed as a Laboratory Sweeper at the time of joining duties, no regular Sweepers would be entitled for the benefit of the said Government Resolution.

10. In the above backdrop, a broader meaning will have to be accorded to the Government Resolution since the intention of the Government was to give better benefits to the Laboratory Attendants and Laboratory Sweepers, with retrospective effect. The language

used in the Government decision set out in the Government Resolution under the title of Shashan Nirnay indicates that all employees working in the Laboratories as Attendants and Sweepers would be eligible for such benefits, subject to fulfilling either of the three conditions.

11. Considering the serious ambiguity in the said Government Resolution and especially in the light of the subsequent letter of the Health Department dated 16.9.2003, the interpretation made by the Industrial Court can be said to be a possible view. The Honourable Apex Court in the matters of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], has defined the scope of interpretation of the High Court and has cautioned that merely because a second view is possible, interference in the impugned order would be unwarranted.

12. It is only on account of the aforesaid ambiguity and the law laid down by the Honourable Apex Court that I am not causing an interference in the impugned judgment. However, it needs mention that in the event of any similar case being brought up for the adjudication of the Industrial Court or any such Court, in connection with the Government Resolution dated 11.2.2000, issued by the

Public Health Department, the issue of interpretation of the said Government Resolution is left open and the impugned judgment of the Industrial Court dated 18.10.2005 shall not be cited as a precedent. Needless to state, it is for the Government to deal with the said ambiguity as it may deem appropriate, provided that it may take steps expeditiously within a period of six months from today.

13. The learned Registrar (J) of this Bench is directed to forward the copy of this judgment to the learned President, Labour and Industrial Courts, Maharashtra, to be circulated to all the Judges / Members of the Labour and Industrial Courts in Maharashtra.

14. This Writ Petition is, therefore, disposed off. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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