

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 155 OF 2017

The Kolhapur Mahanagarpalika Parivahan .. Petitioner

Vs.

Shri Laxman Appa Kagale .. Respondent

WITH

WRIT PETITION NO. 784 OF 2017

The Kolhapur Mahanagarpalika Parivahan .. Petitioner

Vs.

Shri Anandrao Baburao Powar .. Respondent

WITH

WRIT PETITION NO. 2869 OF 2017

The Kolhapur Mahanagarpalika Parivahan .. Petitioner

Vs.

Shelaji Ishwara Pol .. Respondent

Mr. A. V. Bukhari, Senior Advcate i/b. Mr. Abhijit M. Adagule for the Petitioner .

Mr. A. S. Rao i/b. Mr. P. C. Kamble for Respondent in WP/155/2017 and WP/2869/2017.

Mr. Sandesh Patil a/w. Mr. Prithviraj S.Gole i/b. Anusha P Amin for Respondent in WP/784/2017.

CORAM : A.K. MENON, J.

DATED : 17th JANUARY, 2019.

P.C. ,

1. In these three petitions the challenge is to the judgment dated 26th November, 2015 passed in Complaint (ULP) Nos. 58 of 2011, 260 of 2010 and 81 of 2012 under Section 28 of the M.R.T.U. & P.U.L.P. Act, 1971 alleging unfair labour practices under Item 9 and 10 of Schedule IV. The facts vary only to the extent of the posts occupied, date of retirement and the amounts claimed by the respondents. For the purpose of this judgment facts in Writ Petition No. 155 of 2017 are dealt with.

2. The respondent was the original complainant and was employed as a driver since 25th July, 1978. He retired from service on 2nd March, 2002. Post retirement it is his contention that emoluments including dearness allowance, House Rent Allowance, City local allowances due to him stood enhanced by virtue of the Vth Pay Commission recommendations. He therefore contended that he was entitled to difference in wages, increased dearness allowance, House Rent Allowance and City Local allowance collectively amounting to Rs. 92,882/-. He also claimed interest @ 18% p.a.

3. The impugned judgment dated 26th November, 2015 holds the petitioner as having engaged in unfair labour practices under Item 9 and 10 of Schedule IV and directs payment of Rs.92,882/-. Being aggrieved the Corporation is before this Court and has filed the petition on the ground that

though not applicable to it, the Corporation adopted the Vth pay commission recommendations with effect from 1st August, 2004. That Government resolution dated 23rd August, 2004 to that effect provides dues prior to 1st August, 2004 were not to be payable since the recommendations were being adopted from that date. There was no liability to pay in terms of the Vth Pay Commission recommendations prior to 1st August, 2004. Despite this, the impugned judgment does not deal with this aspect of the effective date of Vth Pay Commission recommendations as made applicable to the Corporation by virtue of the Government Resolution.

4. On behalf of the respondent the petition is opposed on the basis that the Government Resolution now sought to be set up was not pressed into service at the hearing of Writ Petition No. 9692 of 2012 where under similar circumstances on a complaint filed by a Conductor who had retired on 31st December, 2003 and who had not been paid dearness allowances from 1st January, 1998 and House Rent Allowance and City Local Allowance from 1st August, 1997 apart from other benefits. In that case this Court has considered the Corporation's contentions on the point of limitation and while disposing of the Writ Petition this Court has held that all issues had been dealt with by the Industrial Court in detail and that there was no cause to interfere with the judgment of the Industrial Court. The petitioners in that case had admitted that from 10th May, 2001 they had paid arrears of Dearness

Allowance, House Rent Allowance to other employees. Mr.Rao therefore submitted that it is not now open for the Corporation to take shelter under the Government Resolution dated 23rd August, 2004.

5. It is pertinent to note that on behalf of the respondent the fact that such Government Resolution was issued and was made applicable is not disputed. In my view merely because the Government Resolution was not relied upon by the Corporation at the hearing of Writ Petition No. 9692 of 2012 cannot prevent the Corporation from urging the issue today, since the issue was very much alive before the Industrial Court having been the focus of the defence in the written statement filed by the Corporation more particularly paragraph (5). All the written statements had taken up similar issues and as stated earlier, apart from minor variations of fact, the principal contentions on behalf of the respondents are identical, that of non payment of difference in wages, Dearness allowance, House Rent Allowance and City Local Allowance. The applicability of the Government Resolution not being under challenge in all these matters, the Industrial Court was bound to consider the effect of the Government Resolution and more particularly the effective date. However, despite such contention being raised in the written statement no issue is seen to have been framed.

6. I may mention that the submission based on the Government Resolution has been noted, however, the Industrial Court has lost sight of the fact that Government Resolution restricted the effective date from 1st August, 2004 and in the circumstances while dealing with the contents of the resolution lost sight of the fact that dues could have been computed provided they were due as of 1st August, 2004. If that were so, it was not possible to pass an order directing payment of the sum of Rs.92,882/- since the respondent – employee had retired prior to the effective date.

7. Thus the impugned order clearly discloses non application of mind on this crucial aspect and accordingly it cannot be sustained. In the other two petitions also the employees had retired before 1st August, 2004 . In Writ Petition No. 784 of 2017 the respondent retired on 23rd September, 2000 and in Writ Petition No. 2869 of 2017 respondent retired in 15th January, 2000. In the circumstances the impugned order of the tribunal will have to be set aside.

8. Accordingly, I pass the following order :

(i) The impugned orders dated 26th November, 2015 in Complaint (ULP) Nos. 58 of 2011, 260 of 2010 and 81 of 2012 are being set aside. The complaints are remanded.

- (ii) The complaint shall be heard on the limited issue to the effect of the Government Resolution No. KOMPA/1904/1340/PR.102/New-25 dated 23rd August, 2004 as referred in paragraph 5 of the written statement.
- (iii) Considering the fact that the complaints are of the year 2010, 2011 and 2012 the Industrial court shall consider granting appropriate priority since issue is very limited and shall dispose the matters within six months from the date an authenticated copy of this order is produced before it.
- (iv) The Industrial Court shall decide the complaints in accordance with law uninfluenced by the observations of this Court.
- (v) Writ Petitions disposed of.

(A.K. MENON.J.)