

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3441 OF 2017

Ammunition factory Credit Co-operative society Ltd.	... Petitioner
Versus	
Late Shri B R Sharma Smt Lalita B Sharma [L.R.]	... Respondent

**WITH
WRIT PETITION NO. 3436 OF 2017**

Ammunition factory Credit Co-operative society Ltd.	... Petitioner
Versus	
Shri Mukund M Joshi	... Respondent

**WITH
WRIT PETITION NO. 3515 OF 2017**

Ammunition factory Credit Co-operative society Ltd.	... Petitioner
Versus	
Shri J V Pethe	... Respondent

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Mr. A. P. Patwardhan a/w Mr. T. R. Yadav i/b Mr. D. D. Pawar for
Petitioner in all writ petitions.
Mr. Nitin A. Kulkarni for the Respondents in all writ petitions.

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CORAM : M. S. KARNIK, J.

DATE : 12th MARCH, 2019.

P. C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. The issue involved in all these petitions is common. Learned Counsel for the petitioner has taken up the facts of writ petition No. 3436 of 2017.

3. Before I proceed to deal with the facts of the case, it would be profitable to make a reference to the order passed by this Court in the case of Ammunition Factory Co-operative Credit Society Ltd., Pune Vs. Badrinarayan R. Sharma and another reported in 2009 1 CLR 317. The issue that arose for consideration of this Court was whether the service rules that have been framed by the employer were in existence on the date on which workman joined service or, if they have been framed thereafter, whether they were accepted explicitly or by conduct.

4. This court after considering the law laid down by the Hon'ble Apex Court held that as regards acceptance of the rules framed by the employer, is a matter of which a factual determination has to be made on the basis of the evidence adduced before the Labour Court. It has been thus observed that the question of the date on which the rules were actually framed and on whether the employees, such as the respondents, assuming that they were in service prior to the enforcement of the rules, had accepted the benefit thereof is to be answered on the basis of the evidence on record.

5. Let me now state the facts of the present case which in brief are as under :-

The respondent filed a complaint of unfair Labour Practice under Section 28(1) read with Schedule IV, item 1(a), (b), (d) and (f) of the MRTU & PULP Act, 1971 before the Labour Court, Pune. The respondent contended that he was appointed by the petitioner - Ammunition Factory Co-operative Society Ltd., which is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. Its members consist of workmen employed in the Ammunition Factory and its allied establishments at Khadki. The Co-operative Society was formed with the objective of providing loan facilities to its members. The finance required by the society is raised through share capital which is contributed by members of the Society. Persons who are not employed in the Ammunition Factory are not allowed to become members of the society. The provisions of the Industrial Employment (Standing Orders) Act and the Model Standing orders are applicable to it.

6. The service rules are framed on 28th April, 1970. It is not disputed that the respondent joined the services with the society prior to framing of the said rules. It is the case of the respondent

that, as he was appointed prior to framing of the service rules, the same cannot be made applicable to him.

7. It is the contention of the learned Counsel for the petitioner, while assailing the impugned order of the Labour Court as well as the Industrial Court that, both the Courts below failed in appreciating the evidence on record inasmuch as according to him, the evidence on record was sufficient to conclude that the respondent had by necessary implication accepted the service rules framed in 1970. Learned Counsel for the petitioner invited my attention to the cross examination of the respondent. He specifically invited my attention to page 46 of the paper-book. According to learned Counsel for the petitioner the respondent has in no uncertain terms admitted that he is getting salary and also promotion on the basis of service rules. Thus, according to him, on the basis of the evidence on record the Courts below should have come to the conclusion that the service rules are applicable to the respondent. Learned Counsel would thus submit that the Courts below have erred in holding that the action on the part of the petitioner in retiring the respondent as per the Service Rules as illegal and unjustified. He would submit that as the service rules have been by necessary implication accepted by the respondent, the question of the application of the model

standing orders would not arise.

8. On the other hand, learned Counsel for the respondent would submit that the Labour Court has considered all the materials on record in detail while coming to the conclusion that there is nothing to indicate the service rules as framed on 28th April, 1970 have been accepted by the respondent. He would invite my attention to the findings recorded by the Courts below that age of retirement of the respondent should have been 60 years as per the Model Standing orders. He further invited my attention to the findings of the Labour Court from paragraph No.27 onwards to contend that the Courts below are justified in holding that the respondent is not governed by the service rules. He would thus urge that retiring the respondent before attaining the age of 60 years on the basis of Service Rules is unjustified.

9. Heard learned Counsel for the parties. I have gone through the petition and the annexures thereto. I have gone through the decision of this Court in the case of Ammunition Factory Co-operative Credit society Ltd. (supra). This Court has in no uncertain terms held that acceptance of the rules need not be by an overt act of acceptance, but can also be implied as a matter of conduct by the acceptance of benefits under the rules. It is further observed that this is a matter of which a factual

determination ought to be made on the basis of the evidence adduced before the Labour Court. It is therefore clear that, based on evidence on record, the question of the date on which the rules were actually framed and whether the employees already in employment prior to the enforcement of the rules had accepted the benefits therein has to be answered.

10. The only material on record as per the contention of the learned Counsel for the petitioner indicating that service rules are in fact accepted by the respondent is the cross examination of the respondent which is at page 46 of the petition. However, from the cross examination, it is noticed that the respondent has only stated that the promotion and the salary which he has received is as per the service rules of the society. In my opinion, this solitary admission cannot be the sole basis for concluding that the respondent accepted the benefits under the Service Rules. The totality of the materials on record has to be considered while arriving at the conclusion.

11. Perusal of the order passed by the Labour Court would reveal that the Labour Court has in detail considered the evidence on record while coming to the conclusion that the service rules are not accepted by the employees concerned. It appears that the petitioner was directed to produce on record

list of employees who retired from the service during the period from 1970 to 1990 and all other relevant service details along with the copies of settlement, agreement or award and documentary evidence to show that the respondent and other similarly situated employees have been given the benefit of the service rules. An opportunity was given to the petitioner to file on record the documents showing that the service rules had been accepted by the respondent either expressly or by conduct. The petitioner had filed on record the list of retired staff who have retired between 1970 to 1990. Except two of the employees in the list, all other employees had retired before attaining the age of 60 years.

12. It is a matter of record that documents showing service record as directed by the Labour Court was not filed by the petitioner. As indicated earlier, except pointing out that portion of the cross examination of the respondent which states that the salary and promotion is as per the service rules, there is nothing on record to indicate that the service rules are accepted by the respondent explicitly or by necessary implication. Admittedly, the respondent was appointed much prior to the Service Rules coming into force.

13. Learned Counsel for the respondents has pointed out that pursuant to the settlement arrived at between the petitioner and the employees of the petitioner, they are paid salary as per the award. Even an opportunity was granted to the petitioner to produce copies of the settlement, agreement or award signed or executed between the parties and other similarly situated employees who have been given the benefits of the service rules. In this view of the matter, the Labour Court recorded a finding of fact that there is no evidence on record that the respondent and other similarly situated employees had accepted the service rules either by conduct or by necessary implication.

14. Having gone through the order passed by the Labour Court, I find that upon considering the evidence on record, the Labour Court has arrived at a finding of fact that there is nothing to indicate that the service rules have been accepted by the respondent or other similarly situated employees. In my opinion, as the petitioner has been unable to demonstrate that finding as recorded by the Labour Court to be perverse or contrary to law, then there is no reason for me to interfere with such a factual determination. Even the Industrial Court while exercising the powers of revision under Section 44 of the Industrial Disputes

Act, rightly refused to interfere with the order passed by the Labour Court.

15. In this view of the matter, I do not find any merit in the present petitions. The writ petitions are therefore dismissed. Rule is discharged with no order as to cost.

(M. S. KARNIK, J.)