

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.20 OF 2007
IN
WRIT PETITION NO.5606 OF 1996

The Pune Municipal Corporation,]
 Shivajinagar, Pune - 411005.] ... Appellants
 (Orig. Respondent No.1)

Versus

1. Pune Mahanagarpalika Kamgar]
 Sanghatana, 637B, Shivajinagar, Pune]
 – 411 005.]
2. Member,]
 Industrial Court, Pune.] ... Respondents
 (Orig. Petitioner & Orig.
 Respondent No.2)

ALONG WITH
LETTERS PATENT APPEAL NO.27 OF 2007
IN
WRIT PETITION NO.5608 OF 1996

The Pune Municipal Corporation,]
 Shivajinagar, Pune - 411005.] ... Appellants
 (Orig. Respondent No.1)

Versus

1. Pune Mahanagarpalika Kamgar]
 Sanghatana, 637B, Shivajinagar, Pune]
 – 411 005.]

2. Member, Industrial Court, Pune.	]]	... Respondents (Orig. Petitioner & Orig. Respondent No.2)
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Mr. R.S. Khadapkar for the Appellant.

Ms. Neeta Karnik for Respondent No.1.

**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 08th NOVEMBER, 2019.

ORDER:- [Per: Smt. Bharati Dangre, J.]

1. The two Letters Patent Appeals filed by the Pune Municipal Corporation challenge the impugned Orders passed by the learned Single Judge in two Writ Petitions instituted by the Respondent i.e. Pune Mahanagarpalika Kamgar Sanghatana granting relief in favour of the petitioners.

2. The Pune Mahanagarpalika Kamgar Sanghatana ("**the Union**"), a registered Trade Union espousing the cause of its employees approached the Industrial Court at Pune alleging unfair labour practice under Item Nos.5 and 9 of Schedule IV of the MRTU and PULP Act, 1971 and prayed for directions to the Pune Municipal Corporation to accord the pay scales to its members on par with the Assistant Electrician working with the

Municipal Corporation and place them in the pay scale of 1080-2470 from 15th August, 1989. It also sought a declaration that the employees are entitled for the difference in the pay scales and be conferred with annual increments. The said relief was sought in the light of the peculiar facts being alleged in the complaint to the effect that the employees who were included in Schedule "A" submitted along with the complaint were the permanent employees of the Maharashtra Water Supply & Sewerage Board ("**the Board**") and were working in different capacities i.e. Pump Operators, Filter Attendants, Telephone Attendants, etc.

In furtherance of a decision of the State of Maharashtra, in the year 1985, the Maharashtra Water Supply & Sewerage Board decided to hand over and transfer all the water works including their maintenance to the Pune Municipal Corporation along with its employees. As two Unions being operational with the Board, the Employees Union entered into an Agreement with the management of the Board on 14th August, 1989 and, in terms of the said Agreement, the transferred employees, from the date of their transfer to the Pune Municipal Corporation, were held entitled for all the benefits and were to be governed by the service rules of the Pune Municipal Corporation. Exception was made in respect of the medical allowances which were payable when they were employees of the Board and, instead, on their transfer to the Corporation, the medical scheme of the Corporation was made applicable to them. Even the responsibility of payments of

pension, provident fund, etc. was undertaken by the Corporation. Pertinent to note that on 15th August, 1989, an Agreement was executed between the Superintendent Engineer, Environmental Engineering Circle, Pune, Maharashtra Water Supply & Sewerage Board and the Municipal Commissioner, Pune Municipal Corporation and it was agreed in principle to effect the transfer on the terms and conditions stipulated in the said Agreement and, from 15th August, 1989, the ownership of the Water Works came to be transferred to the Corporation with the stipulation that the entire staff working on the Water Board except those who are due to retire upto 31st August, 1991 would be transferred to the Corporation on the terms and conditions mentioned in the Agreement. As a covenant of the said Agreement, on transfer of the employees to the Corporation, it was agreed that the service conditions of the employees transferred would not be changed to their disadvantage and pending decision regarding liquidation, liabilities of past services in respect of the staff transferred to the Corporation, the Corporation would pay their leave salary and pension and other retirement benefits including gratuity, etc.

3. It is in the backdrop of this arrangement, the Respondent-Union approached the Industrial Court by instituting the above mentioned complaint. The grievance raised was that on their transfer to the Corporation, they are not extended the pay scales

which are conferred on the employees of the Corporation, who are carrying out the same type of chores and this amounted to discrimination. An example of Pump Operator in the Board was cited as an illustration and it was stated that those who were working as Pump Operator in the Board on their transfer to the Corporation started discharging the duties akin to that of an Assistant Electrician – a post in the Corporation. It was averred that the duties discharged by an Assistant Electrician and Pump Operator are one and the same with no iota of distinction. It was alleged that by virtue of revision of Fourth Pay Commission being made applicable to the Corporation w.e.f. 01st January, 1986, the revised pay scales were not extended to the transferred employees of the Board whereas the Assistant Electricians were held entitled for the revised scales.

4. The complaint filed by the Union came to be dismissed on 26th August, 1996 by the Industrial Court which constrained them to invoke writ jurisdiction of this Court. Two Writ Petitions came to be instituted and numbered as Writ Petition No.5606 of 1996 and Writ Petition No.5608 of 1996. The learned Single Judge allowed the said Writ Petitions by taking note of the evidence brought on record, demonstrating that the Pump Operators of the erstwhile Board and the Assistant Electricians of the Pune Municipal Corporation are entrusted with the same kind of work, discharged the same duties and bear

the same responsibilities. By recording that there being no distinction in the nature of duties exercised by the erstwhile employees of the Board and the employees holding the post of Assistant Electrician in the Corporation, the Single Judge did not find any justification in awarding different pay scales. The learned Single Judge held that once the employees of the Board were taken over by the Corporation and the Agreement executed at the time of transfer of these employees assured extension of the same benefit and made the same service conditions of the Corporation applicable to the transferred employees, the order of the Industrial Court cannot be sustained and the same was quashed and set aside.

It is this order which is assailed in the present Letters Patent Appeals.

5. From perusal of the aforesaid facts involved, the position which emerges and which is not disputed by the learned counsel for the Corporation is that the State Government had taken a decision to hand over its undertaking known as the Maharashtra Water Supply & Sewerage Board to the Pune Municipal Corporation. While arriving at a settlement, the registered Union of the Board were consulted and the terms and conditions of the settlement came to be drafted. It is not in dispute that the employees of the Board came to be transferred to the Pune Municipal Corporation and were held entitled for all the service

benefits flowing from the factum of their transfer to the Corporation, from the date of such transfer. They were also held entitled for the benefit of permanency in terms of the Kalelkar Award. The employees of the Board were working on different posts with the Board and on their transfer to the Corporation, the benefit of the pay protection was accorded to them. The discord arose when the pay scale of the employees working with the Pune Municipal Corporation underwent a revision with effect from 1st January, 1986 in wake of the recommendations of the Sixth Pay Commission by Government Resolution dated 9th January, 1991. The Pune Municipal Corporation extended the benefit of the revision of pay scale to its own employees but failed to extent the same benefit to the members of the Union who came to be transferred on the establishment of the Pune Municipal Corporation.

The evidence adduced before the Industrial Court affirm that the Union examined its employees, who deposed that they are discharging the same duties in the Corporation which they were previously discharging while on the establishment of the Board. The Union also examined an Assistant Electrician working with the Pune Municipal Corporation, who categorically deposed that the work which the Pump Operators were carrying out with the Board is the same as the work which were carried out by the Assistant Electrician working on the establishment of the Corporation. In the light of the said evidence brought on record,

the learned Single Judge recorded that not only the Assistant Electricians working with the Corporation are discharging the duties similar to that of Pump Operators but the qualification prescribed for being appointed to the two posts are also identical viz. both were required to pass Wireman's Examination with Second Class. On being satisfied that the qualifications prescribed for the two posts are identical and so is the case of the nature of duties discharged by the holders of both the posts, the learned Single Judge by applying the principles of equal pay for equal work held the employees of the Union eligible for extending the similar pay scale to their counterparts in the Corporation by observing that the distinction was only in respect of the nomenclature of the post with the Board and the Corporation. Another important fact viz. that at present the Pump Operators and Assistant Electricians are paid the same pay scale also coaxed the learned Single Judge, holding in favour of the Union.

6. We have perused the Affidavit placed on record by the Respondents on 8th June, 2017 where a categorical statement is to be found that the Corporation has granted pay parity to the subject category with effect from 1st January, 1996 while conferring the benefit of Sixth Pay Commission. A copy of the Government Resolution conferring such pay party with effect from 1st January, 1996 to the various posts involved is also placed

on record with the said Affidavit.

7. In the light of the aforesaid facts when the Respondent has established that by virtue of the agreement executed between the employees of the Board and the Management of the Board while transferring their service to the Corporation which entailed the applicability of the service conditions of the Pune Municipal Corporation, we do not find any justification in the Appellants denying the benefit of pay revision to the employees of the Board on their transfer to the Corporation. The nature of duties and responsibilities discharged by the two sets of employees entitled them to claim parity in pay and, accordingly, made them eligible for fixation of pay scale allied to the employees of the Corporation. The denial of the claim by the Corporation is rhetorical, without any justiciability.

The learned counsel for the Appellant has placed reliance on the judgment of the Apex Court in the case of *State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association, reported in (2002) 6 SCC 72*. The dictum of the Apex Court in the said judgment is that the Court should interfere with the administrative decision pertaining to pay fixation and pay parity only when they find a decision patently irrational, unjust and prejudicial to a section of employees and when taken in ignorance of material and relevant factors, is a settled proposition. There is no quarrel about the proposition,

that the designation alone cannot lead to parity and two posts cannot be equated only because of the similarity of the job entrusted to them and several other factors like the method of recruitment, level at which the recruitment is made, minimum educational and technical qualifications, etc. would have to be taken into account and since this was found to be an expert job, the Apex Court ruled that it is best left to an Expert Body. However in the facts of the case, there is no dispute about the fact that the employees of the Union came to be transferred to the Corporation and the terms of the Agreement clearly stipulated that they would be governed by the service rules of the Pune Municipal Corporation. The responsibility of the transferred employees was agreed to be borne by the Corporation but it was only when the revision of the pay scales were to be made applicable, the Corporation went on a back footing and refused to extend the benefit to the transferred employees. In any contingency, on the Sixth Pay Commission being implemented, good sense has prevailed upon the Appellants and it has granted pay parity, indicating that they have conceded to the fact that the employees of the Respondents are entitled for the same benefits as their own employees as both of them are discharging the similar duties.

8. The Affidavit placed on record by the Union discloses that the benefit of pay revision is already conferred in

commensuration of the recommendation of the Fifth and Sixth Pay Commissions. The present Letters Patent Appeals, therefore, deserve a dismissal and are accordingly dismissed.

9. The amount deposited by the Appellant-Corporation in the Industrial Court, Pune which has been invested in terms of the directions of the Court, may be permitted to be withdrawn by the Respondents and be disbursed to the concerned employees.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]