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Bharat D. Pandit
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5920 OF 2017

Nashik Municipal Corporation …Petitioner(s)
Versus
Prabhakar Kisan Mali And Ors. …Respondent(s)

WITH
Writ Petition No. 5152 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Sunil Manohar Bramhane And Ors. ...Respondent(s)

WITH
Writ Petition No. 5153 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Dattatray Gulabrao Bairagi And Ors. ...Respondent(s)

WITH
Writ Petition No. 5154 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Suresh Devram Shingade And Ors. ...Respondent(s)

WITH
Writ Petition No. 5155 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Bhagwan Vishnu Ahire And Ors. ...Respondent(s)

WITH
Writ Petition No. 5156 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Murlidhar Pandit Gore And Ors. ...Respondent(s)

WITH
Writ Petition No. 5157 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Jagannath Rajaram Potinde And Ors. ...Respondent(s)

WITH
Writ Petition No. 5158 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Chandar Laxman Chaudhari And Ors. ...Respondent(s)

WITH
Writ Petition No. 5159 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ganpat Mahadu Dobade And Ors. ...Respondent(s)

WITH
Writ Petition No. 5160 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Nandkumar Lahanu Gorade And Ors. ...Respondent(s)

WITH
Writ Petition No. 5161 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Dada Vishwanath Wagh And Ors. ...Respondent(s)

WITH
Writ Petition No. 5162 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Dinkar Bhimrao Tuplondhe And Ors. ...Respondent(s)

WITH
Writ Petition No. 5163 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Keru Dagdu Bhoir And Ors. ...Respondent(s)

WITH
Writ Petition No. 5164 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Salim Hussain Maniyar And Ors. ...Respondent(s)

WITH
Writ Petition No. 5165 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Shantaram Rambhau Bachhav And Ors. ...Respondent(s)

WITH
Writ Petition No. 5166 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ramesh Ramdas Bairagi And Ors. ...Respondent(s)

WITH
Writ Petition No. 5167 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Popat Kisan Bhagare And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5168 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Sanjay Dashrath Raut And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5169 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Sharad Digamber Bagul And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5170 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ashok Dinkar Dalvi And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5171 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Nandkumar Sahadev Palange And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5172 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Gulab Valu Pawar And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5173 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Rajendra Bhulan Chandliya And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5174 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Prabhakr Sukhdev Pavade And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5175 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ramdas Yashwant Gode And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5176 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Popat Baban Jachak And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5177 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Sahebrao Sada Desale And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5178 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Kasim Chandkhan Pathan And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5179 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Popat Pandhari Kalunge And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5180 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Nivrutti Bandu Muradnar And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5181 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Jagdish Mohansingh Pardeshi And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5182 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Deepak Govind Mugdal And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5183 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Jagganath Rambhau Jhankar And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5184 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Dattu Rangnath Kale And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5185 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Gangaram Vaman Nimbekar ...Respondent(s)

WITH
Writ Petition NO. 5186 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Chandrakant Ananda Pawar And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5187 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Shaikh Munaf Nasir Jamil And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5188 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Prakash Kisan Gaidhani And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5189 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ramesh Ramji Borisa And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5190 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Anjiram Madhav Kale And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5191 OF 2017

Nashik Municipal Corporation …Petitioner(s)
Versus
Devidas Dattatray Ingale And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5192 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Balkrishna Gangadhar Halade And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5193 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Popat Raosaheb Porje And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5921 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Smt. Shobha Balu Bhalerao And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5922 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Rajendra Gopinath Choudhary And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5923 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Bapur Rangnath Kotwal And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5924 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ananda Damu Netawane And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5925 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Gangadhar Nivrutti Mali And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5926 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Balu Mukunda Bhadange And Ors. ...Respondent(s)

WITH

Writ Petition NO. 5927 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Chandrakant Gojraji Satpute And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5928 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Maruti Krushna Thorat And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5929 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Babynaaz Jahir Ahmad Shaikh And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5930 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Laxman Pandharinath Thete And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5931 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Umarkhan Abbaskhan Pathan And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5932 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Rajendra Raghuveer Bagade And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5933 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Fakir Mohammad Yakub Naginewale And Ors . ...Respondent(s)

WITH
Writ Petition NO. 5934 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Prakash Vasant Desale And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5935 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
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Anil Sambhaji Kedare And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5936 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ashok Hari Kale And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5937 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Vijay Rakhmaji Chaughule And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5938 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Pandurang Mohan Gaidhani And Ors. ...Respondent(s)

WITH
Writ Petition NO. 5939 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Chandrabhaga Laxman Barhe And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8287 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Umaji Ramu Pawar And Ors. ...Respondent(s)

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Writ Petition NO. 8288 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ramchandra Lahanu Dodake And Ors. ...Respondent(s)

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Shridhar Damodar Algat And Ors. ...Respondent(s)

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Nashik Municipal Corporation ...Petitioner(s)
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Madhukar Manohar Hande And Ors. ...Respondent(s)

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Nashik Municipal Corporation ...Petitioner(s)
Versus
Shankar Dhondiram Khelukar ...Respondent(s)

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Nashik Municipal Corporation ...Petitioner(s)
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Prathmeshgir Gyangir Gosavi And Ors. ...Respondent(s)

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Nashik Municipal Corporation ...Petitioner(s)
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Subhash Popatrao Shinde And Ors. ...Respondent(s)

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Nashik Municipal Corporation ...Petitioner(s)
Versus
Madhav Karsan Maru And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8298 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Najmabi Mustak Shaikh And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8299 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Tryambak Bhaurao Shinde And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8300 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Ddaji Shankar Bachhav And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8301 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Somnath Balaji Shinde And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8302 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Nivrutti Namdeo Donde And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8308 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Balu Jayram Gaikwad And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8313 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Dhananjay Rasiklal Nandode And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8655 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Vikram Narayan Suryawanshi And Ors. ...Respondent(s)

WITH
Writ Petition NO. 8656 OF 2017

Nashik Municipal Corporation ...Petitioner(s)
Versus
Balu Bhagvan Pawar And Ors. ...Respondent(s)

Mr. Murlidhar L. Patil for the Petitioner in All the Writ Petitions.

Mr. Kiran Bapat i/b Mr. Vishal S. Tambat for Respondent No.1 in all the Writ Petitions.

Mrs. Vaishali S. Nimbalkar, AGP for Respondent/State in Writ Petition No.5920/17 and Writ Petition Nos. 5152/17 to 5164/17.

Mr S.H. Kankal, AGP for Respondent/State in Writ Petition Nos.

5165/17 to 5178/17.

Mr. C.D. Mali, AGP for Respondent/State in Writ Petition Nos.5179/17 to 5192/17.

Mr. A.B. Kadam, AGP for Respondent/State in Writ Petition Nos. 5193/17 and Writ Petition Nos.5921/17 to 5933/17.

Mr. S.K. Babar, AGP in Writ Petition Nos.5934/17 to 5939/17 and Writ Petition Nos.8287/17 to 8294/17.

Mr. P. V. Rajan-Nelson, AGP for Respondent/State in Writ Petition Nos. 8295/17 to 8299/17 and Writ Petition Nos. 8300/17 to 8302/17 and Writ Petition Nos.8308/17, 8313/17, 8655/17 and Writ Petition No.8656/17.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 26, 2019

ORAL JUDGMENT:

1] Common judgment dated 26/09/2016 pronounced by the Industrial Court in Complaint (U.L.P.) No. 113 of 2016 is a subject matter of challenge in all these Petitions. Parties, by consent, submit that all these Petitions can be heard and disposed of together.

2] For convenience, facts in Writ Petition No.5920 of 2017 are taken into consideration, which are almost identical in all the cases.

3] It is the case of the Petitioner-Corporation that Respondents are either working as drivers or stood superannuated or are legal heirs of erstwhile employees who were working as drivers.

4] Since Respondents-employees who had completed period of 12 years of service as drivers were suffering stagnation in employment, they were placed in higher pay-band of Rs 5200-20200 + Grade Pay of Rs 2700/- Respondents-employees, having noticed that pay-scale of Rs 9300-34800 with Grade Pay of Rs 4200/- was approved by the Government in favour of employees of Pimpri-Chinchwad Municipal Corporation, through their Union, requested the Petitioner-Corporation to make applicable same pay-scale which is corresponding to the pay-scale recommended as per 6th Pay Commission vide communication dated 30/11/2009.

5] The said request for grant of a particular pay-scale was placed before the General Body of the Petitioner-Corporation, who, by its Resolution No.550 dated 21/06/2010 granted approval and as such, Respondents-employees started getting pay-scale of Rs 9300-34800 with Grade Pay of Rs 4200/-.

6] The aforesaid approval was subject to provisions of Section 51(4) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the said Act"), which contemplates prior approval of the State Government.

7] In compliance with sub-section (4) of Section 51 of the said Act, Petitioner-Corporation forwarded communication dated 10/12/2010 to the State Government for its approval, as placement of the employees in higher pay-band amounts to creation of new posts. The State Government while responding to aforesaid communication dated 10/12/2010, vide letter dated 25/01/2011 informed that aforesaid provisions are not applicable to the issue raised and as such, State Government's permission was not necessary. As such, all the drivers-employees who had completed 12 years of service and stagnated, continued to draw such higher pay-scale.

8] Thereafter, Respondent-State Government vide communication dated 09/02/2016 informed that prior approval of the State Government while granting higher pay-band is mandatory as was

decided on 4/5/2006, as the administrative expenses of the Petitioner-Corporation is more than prescribed limit of 35% and accordingly informed its disapproval to the higher pay-band.

9] As a consequence of above, since proposal for grant of approval under section 51(4) of the said Act was returned by the State Government, consequential order came to be issued by the Petitioner-Corporation on 06/04/2016. In that order, it is mentioned that by mistake higher pay-band was made applicable to the Respondents-drivers. In view of the bond of assurance executed by them while receiving such benefit, it was directed that Respondents-drivers be reverted to original pay-scale and the amount paid to them is directed to be recovered.

10] Respondents-drivers feeling aggrieved preferred aforesaid U.L.P. Complaint which came to be allowed vide impugned order dated 26/09/2016. As such these Petitions.

11] Heard respective Counsel.

12] Mr. Patil, learned Counsel appearing on behalf of the Petitioner-

Corporation while questioning the order of the Industrial Court would urge that the order is *ex facie* illegal and is in contravention to provisions of Section 51(4) of the said Act which reads thus:-

> Sec.51 **Number, Designations, grades etc of other Municipal Officers and Servants**.
> "(4) No new post of the Officers and servants of the Corporation shall be created without the prior sanction of the State Government.
> Explanation
> Any revision of payscale or pay structure or grant of special pay, or grade, or revision of allowances (excluding dearness allowance) or change in designation shall be deemed, for the purpose of sub-section (4), to be the creation of a new post."

According to him, once State Government has returned the proposal without granting approval for creation of post, Industrial Court has committed an error in passing the order contrary to the said statutory provision. Shri Patil would urge that even placing of Respondents-employees in higher grade amounts to creation of post within the meaning of the said provision. Shri Patil then would invite attention of this court to the Undertaking given by the employees-drivers that they are liable for recovery of difference in pay-band if Government refuses to grant approval. He would then urge that it is the policy of

the State Government that in case if administrative expenses of a Corporation are more than 35% of its income, no new posts are to be created. According to him, admittedly, administrative expenses of the Petitioner-Corporation are more than 35% on the date of decision on the issue of grant of approval under Section 51(4) of the said Act and that being so, Industrial Court ought not to have granted declaration of unfair labour practice.

13] Shri Patil then would invite attention of this Court to the judgment of the Apex Court in the matter of *P.U. Joshi and Others vs. Accountant General Ahmedabad and others*[1] in support of his contention that there is no absolute right in employees, like Respondents-drivers, to claim that Rules governing conditions of service would be forever same as they were, when they entered in service for all purposes. It is always open for the employer to change service conditions by which employees are not taken by surprise. He would try to rely upon the Undertaking given by the Respondents-employees so as to buttress his above argument. Shri Patil would urge that there is no variation in service conditions as Respondents-

1 (2003) 2 SCC 632

employees are restored to original Pay-band, as the Government has not approved new service conditions i.e. higher pay-band. Such an act on the part of the Petitioner-Corporation cannot be termed to be disadvantageous. Relying on the judgment of the Apex Court in the matter of *Ahmed Hussain Khan vs. State of Andhra Pradesh*[2], particularly para 21, he would urge that if requirement of prior approval of the State Government under Section 51(4) was very much within the knowledge of the Respondents-employees, particularly in the backdrop of Undertaking given by them, Tribunal committed an error in recording finding of unfair labour practice, as there is no violation of any settlement, agreement or award and therefore complaint ought to have been dismissed.

14] While countering the said submissions, Mr. Bapat, learned Counsel appearing on behalf of Respondents-employees would urge that initially pay-scale was revised with effect from 01/01/2006 pursuant to decision of General Body and Respondents-employees were placed in the higher pay-scale of Rs 9300-34800 + Grade Pay of Rs 4200/-. However, no benefit of pay fixation was given from

2 1984(Supp) SCC 467

01/01/1996 to 31/03/2010. The Commissioner thereafter issued order on 25/10/2010 revising pay-scale with effect from April, 2010 subject to approval of the State Government. The Commissioner thereafter having received communication dated 25/01/2011, on 25/05/2011 issued order confirming revision of pay-scale on the premise that approval of the State Government under sub-section (4) of Section 51 of the said Act was not necessary. It is only after audit objection, Government refused approval, resulting into order of recovery and placing the Respondents-employees into original pay-band. According to him, once General Body approves placing of the Respondents-employees in a higher pay-band, which was given effect to, service conditions have been changed pursuant to the agreement. According to him, if service conditions were to be changed, there should have been first notice to the Respondents-employees and this is conspicuously absent in the case in hand. He would also argue the principle of estoppel so as to justify the order of Industrial Court. Relying on the judgment of this Court in the matter of *N.T.C. (S.M.) Ltd. vs. Kamla Singh and Ors.*[3], Mr. Bapat would urge that by virtue of the order of the State Government, placing the Respondents-

3 2017 SCC Online Bom 8334

employees into reverse motion qua their salary/pay-band can be inferred to be an unfair labour practive within the meaning of Schedule-IV Item No. 9 of the MRTU and PULP Act. According to him inability to implement would be required to be read into unfair labour practice, particularly when such an inability is without any good cause. As such, according to him, all these Petitions are devoid of merit and are liable to be dismissed.

15] Considered rival submissions.

16] Provisions of Section 51(4) and its explanation reads thus:

> Sec.51 **Number, Designations, grades etc of other Municipal Officers and Servants**.
> "(4) No new post of the Officers and servants of the Corporation shall be created without the prior sanction of the State Government.
> Explanation
> Any revision of payscale or pay structure or grant of special pay, or grade, or revision of allowances (excluding dearness allowance) or change in designation shall be deemed, for the purpose of sub-section (4), to be the creation of a new post."

17] The State Government on 22/04/2009 issued Notification,

thereby revising pay-scale of its employees with effect from 01/01/2006 as per the recommendations of the 6th Pay Commission. While implementing the recommendations of said the 6th Pay Commission qua employees of Corporation, a condition was incorporated by State Government in its GR dated 10/08/2009 that the Municipal Council shall not make any increase in the revised pay-scale. As such, pay-scale of drivers with effect from 01/01/2006, and of those who have completed 12 years of service and 24 years of service is as under:-

(a) Drivers Pay-scale w.e.f. 01/01/2006
5200-20200 + Grade Pay 2400

(b) After completion of 12 years of service
5200-20200 + Grade Pay 2400 + Additional Grade Pay Rs 300/- (First benefit)

(c) After completion of 24 years of service.
5200-20200 + Grade Pay 2400 + Additional Grade Pay Rs 450/- (Second benefit)

18] The General Body of the Petitioner-Corporation on 21/06/2010 passed a Resolution No.550 giving approval to the proposal for revision of pay-scale of drivers who have completed 12 years of service, thereby granting following pay fixation:-

(d) (1) Granting imaginary pay fixation in 5000-150-8000 instead of 4500-125-7000 w.e.f. 01.01.1996 (5th Pay Commission)

(e) (2) Granting imaginary pay fixation in 9300-34800 + 4200 instead of 5200-20200 + 2700 w.e.f. 01/01/2006 (6th Pay Commission)
(3) No benefits be given of imaginary pay fixation from 01.01.1996 to 31.03.2010.
(4) Benefits of revised pay-scale be given from April 2010.

The aforesaid fixation from 01/01/1996 to 31/03/2010 appears to be imaginary, as no monetary benefits are passed on to Respondents-employees and rightly so, as agreed and as such, benefit of revised pay-scale was given only from April, 2010.

19] The State Government on 25/01/2011 returned the proposal with a direction to resubmit the same with certain clarification from the Petitioner-Corporation with an observation that provisions of Section 51(4) of the said Act will not be applicable to the proposal in hand, as a consequence of which Commissioner of the Petitioner-Corporation on 25/05/2011 issued order confirming revised pay-scale in the backdrop of non-requirement of the approval under Section 51(4).

20] In the aforesaid background, Respondents-employees/drivers have already been benefited from April, 2010 onward. The said benefit is sought to be withdrawn pursuant to the audit objection, as a consequence of which fresh proposal was submitted for approval of the State Government which it refused to grant on the ground of excess administrative expenses of the Petitioner-Corporation i.e. above 35% of its income.

21] In the aforesaid backdrop, Shri Patil, learned Counsel for the Petitioner-Corporation, has claimed that the Petitioner has acted in tune with the requirement of Section 51(4) of the said Act and that being so Tribunal ought not to have recorded finding of unfair labour practice.

22] If the aforesaid submission is appreciated, what is required to be noticed is, already service conditions of Respondents-employees have undergone a change by virtue of decision of the Commissioner on 25/05/2011 based on General Body Resolution of the Petitioner-Corporation, thereby placing them in higher pay-band i.e. revised pay-

scale. If such service conditions are required to undergo change, statute contemplates a procedure which, admittedly, Petitioner-Corporation has not taken recourse to. As such, ratio of the judgments of the Apex Court in *P.U. Joshi* and in *Ahmed Hussain Khan* cited supra, on which reliance is placed by Mr. Patil, is not applicable to the case in hand. However, ratio of the judgment of this Court in *N.T.C. (S.M.)* cited supra on which reliance is placed by Mr. Bapat, squarely applies to the facts of the present case.

23] The Petitioner-Corporation based on General Body Resolution and in view of communication issued by the State Government of non-applicability of provisions of Section 51(4) has acted to the benefit of the Respondents-employees by conferring higher pay-band when Respondents-employees have not suppressed anything from the Petitioner-Corporation or State Government. It is the communication between the Petitioner-Corporation and State Government which has resulted into an act of reduction of the pay-band which was already conferred. As such, on one hand, Petitioner-Corporation has passed a Resolution to extend the benefit and, on the other hand, taking shelter of the Government communication, are trying to withdraw the said

benefits, which has properly prevailed before the Tribunal to pass the impugned award.

24] The Tribunal has rightly observed that before effecting such a change i.e. directing recovery and placing Respondents-employees back to their original pay-scale, neither any notice nor opportunity was given to the Respondents-employees. It is not that Respondent-employees have suppressed any material from the Petitioner-Corporation or State Government but it is the failure of the Petitioner-Corporation itself and the State Government which is sought to be encashed by changing service conditions of Respondents-employees at the cost of their enhanced salaries. Petitioner, instead of sending revised proposal to the State Government for approval subsequent to the first revision, should have taken steps to reduce its administrative expenses for which no efforts were taken by the Petitioner. Rather, Petitioner-Corporation has decided to cut down salaries of the Respondents-employees, that too when they were not at fault.

25] The State Government is also equally required to be blamed in

the case in hand, as they have changed their colours from time to time. Initially, on 25/1/2011, State Government communicated that for the proposal in question, approval of the State Government was not required for revising the pay-scale of the Respondents-employees, whereas subsequent thereto for the reasons best known to them, they changed the said stance for which no convincing explanation is coming forth.

26] In the aforesaid backdrop, in my opinion, order of the Tribunal, thereby declaring the Petitioner-Corporation to have engaged in unfair labour practice within the meaning of Item Nos. 9 and 10 of Schedule-IV of the MRTU and PULP Act, 1971 is very much justified. Tribunal is also justified in setting aside the order dated 06/04/2016 i.e. Exh.C-178 in respect of recovery of the amount from the Respondents-employees either from their salary or pensionary benefits, thereby reducing their pay-scale. Tribunal is also justified in maintaining pay-scale of Rs 9300-34800 with Grade Pay of Rs 4200/- in favour of Respondents-employees. As such, contention of the learned Counsel for the Petitioner-Corporation that service conditions of the Respondents-employees have not undergone a change, cannot

be accepted in the wake of aforesaid observations.

27] In my opinion, there is no substance in all these Petitions which calls for any interference in the order impugned. All these Petitions as such fail and same are accordingly dismissed.

(NITIN W. SAMBRE, J.)