

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1050 OF 2019

Divisional Controller, M.S.R.T.C., Divisional Office and others.

..VS..

Latif Khan Yusuf Khan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.S.Charpe, Advocate for the petitioner.
Shri Pramod N. Verma, Advocate for the respondent.

CORAM : Z.A.HAQ, J.
DATED : 15/02/2019

1] Heard.

2] By this petition, the employer has challenged the order passed by the Industrial Court by which complaint filed by the Respondent/Employee under Section 28 read with Items 5 and 9 of Scheduled-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “the Act of 1971”) is allowed. The Industrial Court has held that after reinstatement, as per the circular dated 03.12.2005, consequent to the decision of the employer, the respondent-employee was entitled to be continued in employment and the wages should have been fixed at Rs. 4,280/- per month. The Industrial Court has held that the employer committed illegality by fixing the wages of the respondent-employee at Rs.2,500/- per

month.

The submission on behalf of the petitioners-employer is that the respondent-employee had accepted his continuation and fixation of the wages at Rs. 2500/- per month, and therefore, he is estopped from subsequently claiming that his wages should have been fixed at Rs. 4280/- per month. It is submitted that in similar facts, in the case of ***Chandrakant Manoharrao Waghmare V/s Divisional Controller, Maharashtra State Road Transport Corporation, reported in 2016 (2) AIR M.R. at Page 347***, this Court has not accepted the similar claim made by the employee, subsequently, on the basis of the circular dated 3.12.2005.

3] After examining the material placed on record and on going through the impugned order, I find that the Industrial Court has dealt with all the relevant aspects in paragraph Nos. 20 to 23 of the impugned order. In the facts of the case, it cannot be said that the respondent-employee could not have subsequently made the claim before the Industrial Court, relying on the circular dated 3.12.2005, as the office note of the employer shows that the competent authority itself had taken the decision to fix the wages at Rs. 4280/-per month. Apart from this, the learned advocate for the respondent-employee has rightly relied

on the judgment given in the case of *Sushil Kumar Yadunath Jha V/s Union of India and another, reported in AIR 1986 SC at Page 1636* in which it is held that in such a situation, the employee has no bargaining power, and if the employee accepts a proposal given by the employer, which is disadvantageous to the employee, it will not come in the way of the employee in approaching the Competent Court for relief. Moreover, in the facts of the present case, the respondent-employee was asked to join and then subsequently the order fixing his wages at Rs. 2500/- per month came to be issued.

4] I find that the impugned order does not suffer from any illegality which necessitates interference by this Court in the extra-ordinary jurisdiction.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE