

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7819 OF 2018

BHAGVAT SHESHRAO KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.U.V.Khonde h/f Mr.V.P.Latange, Advocate for the petitioner.
Mr.A.S.Shinde, AGP for respondent Nos. 1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 26/02/2020

PER COURT :

1. The petitioner/original complainant in Complaint (ULP) No.75/2010, is aggrieved by the judgment of the Industrial Court dated 21/04/2018, by which his complaint seeking regularization as a Driver and all benefits to be paid under the Kalelkar Settlement as a Driver, has been dismissed.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the record and proceedings from the Industrial Court. I have also gone through the GR dated 24/11/2000 and the scheme under the Kalelkar Settlement which was first implemented by GR dated 06/01/1966.

3. The record and proceedings reveal that the petitioner was selected and appointed as a “Cleaner” in 1987. After 5 years on daily wages, he was taken on converted regular temporary establishment (CRTE). He claimed that he was working as a “Driver” and was driving a tanker or a jeep as and when the Management directed him. Till his retirement in 2018, he has been driving different types of vehicles.

4. The record also reveals that the petitioner was driving vehicles like trucks, tankers, pressure machine, crushers and jeep, intermittently and for periods as directed by the Deputy Regional Engineer. It is, however, undisputed that the petitioner was never selected and appointed on the position of a Driver.

5. The scheme under the Kalelkar Award is that a daily wager working in a particular activity for 5 consecutive years, irrespective of whether he works for 240 days in each calendar year or not, would get a right to be brought on CRTE after 5 years. Thereafter, he is taken on the regular establishment after 5 years and is deemed to be regularized under the Kalelkar Award. The GR dated 24/11/2000, does not enable the State Government or any department to change the track or activity of an employee and grant him benefits under a

different activity.

6. In the present case, the contention of the petitioner is that he joined as a cleaner, was taken on CRTE as a cleaner and since he was driving the vehicles as and when directed, he should be granted regularization as a Driver by changing his track from Cleaner to Driver. I do not find any such provision under the Kalelkar Award and it is altogether a different proposition that the State Government may have misused the Kalelkar Award by granting regularization to cleaners who were intermittently working as Drivers. Two wrongs do not make one right.

7. In view of the above, I do not find that the Industrial Court has committed any error in dismissing the complaint.

8. At this juncture, the learned Advocate for the petitioner submits that though he worked as a Driver, as and when directed till his retirement, he has not been paid the additional wages since 1992 till 2018. Unfortunately, this was not looked into by the Industrial Court as the petitioner had not specifically raised this issue as an alternative relief.

9. In view of the above, this petition is dismissed for being devoid of merit.

10. The petitioner is granted liberty, either to make a representation to the employer establishment or raise an industrial dispute u/s 2(k) of the Industrial Disputes Act for seeking calculations of such unpaid additional wages and for crystallizing the said right. If he makes a representation to the respondents within 30 days from today, the establishment shall pass an appropriate order on or before 30/04/2020 and communicate the said order to the petitioner forthwith. If he is aggrieved by the said order, he is at liberty to take recourse to a remedy as would be permissible in Law.

11. R & P be returned to the Industrial Court, Aurangabad forthwith.

(Ravindra V.Ghuge, J.)