

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

WRIT PETITION NO. 8419 OF 2019

M/s.Shree Stampings

...Petitioner

vs.

Mr.Ramesh Gangaram Kamble

...Respondent

Mr.K.S. Bapat i/b. Desai & Desai Associates for Petitioner.

Ms.Bhavana H. Mhatre for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 25 FEBRUARY 2020

PC. :

Heard learned Counsel for the parties. The Petitioner is permitted to amend the petition by correcting the name of the Respondent. Amendment to be carried out forthwith. Reverification is dispensed with.

2 This writ petition challenges an order passed by the Industrial Court at Pune on a complaint of unfair labour practice. The unfair labour practice originally alleged by the complainant (the Respondent herein) was breach of a settlement. The complaint was accordingly under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 ('Act'). During the pendency of the complaint, the complainant amended his plaint and alleged discrimination in the matter of revision of pay, alleging thereby an unfair labour practice under Item 5 on the part of the employer. The complainant, in particular, pointed out that employees working on the same posts and performing the same duties, were paid better wages by giving them higher revisions than the complainant. He also gave a concrete example of one particular employee by producing documents on record. The Industrial Court, in its impugned order, considered the complainant's prayers in the

light of the material placed before it by the parties. The allegation of the complainant that the Respondent employer had discriminated against him in the matter of wage revision was supported by documents at Exhibits U-31, U-32 and U-33. The documents showed that the complainant and one S.D. Sarode, who were working in similar posts as Production Operators, were paid different basic wages. Whereas the basic wage of the complainant, who was employed, in fact, prior to Sarode, was Rs.97-68, the basis wage of Sarode was Rs.234-32. The total wage packages, considering their basic wages and allowances, worked out differently in case of the two, the complainant getting much lesser pay than Sarode. The court proceeded on the footing that the evidence on record did show that there was discrimination on the part of the Respondent in respect of employees working in the same posts; the wages of these employees were different. The court was of the view that discrimination having, thus, been proved by the complainant through documentary evidence, the unfair labour practice engaged in by the Respondent was proved. The court observed that there should not be two sets of conditions for workers performing the same duties and that, in the premises, the complainant was entitled to a declaration under Item 5 of Schedule IV of the Act.

3 No infirmity can be found with the impugned order of the Industrial Court. The order is supported by evidence on record. The order takes into account all relevant and germane facts and materials and does not consider any irrelevant or non-germane material or circumstance.

4 Mr.Bapat, learned Counsel appearing for the Petitioner, submits that the employer is within his rights to pay different wages to his workers. Learned Counsel submits that wage rise in case of employees

would depend on various factors like targets, performance, productivity, discipline, skills set, commitment, etc. Learned Counsel submits that depending on the skill sets and commitments of the parties, individual wage rise would be given. Learned Counsel submits that individual wage rise such as this can be a subject matter of an industrial dispute, but not of a complaint of unfair labour practice under the Act. Learned Counsel is not right there. Generally speaking, it may be that wages or wage revisions may be subject to these different factors, but that is not the case of the employer in the present case. The purported difference in the wages of the two employees was not explained by the employer before the trial court on the basis of any of these factors. It is no good to now claim before the writ court, in a judicial scrutiny of the trial court order, by way of a general assertion, that wages could be different depending on difference in performance or other factors; it was for the employer to satisfy the court that the difference in wage revision in the particular case of the complainant and Sarode was not due to discrimination of the complainant, but on account of merits of Sarode based on his performance or other factors. Absent any of these circumstances, no fault can be found with the Industrial Court blaming the difference in pay revision in the cases of two different employees working in the same post on discrimination.

5 Mr.Bapat submits that the Respondent was not diligent in even attendance. No such case was made out before the Industrial Court and no such case can now be urged before this court.

6 Accordingly, there is no merit in the challenge. The writ petition is dismissed.

(S.C. GUPTE, J.)