

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

WRIT PETITION NO.6563/2016

Maharashtra State Road Transport Corporation, Nagpur

..V/s..

Vasant Namdeorao Salwkar and another

AND WRIT PETITION NO.6564/2016

Maharashtra State Road Transport Corporation, Nagpur

..V/s..

Vasant Namdeorao Salwkar and another

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

Court's or Judge's orders

Shri S.C. Mehadia, Advocate for the petitioner.
Shri A.M. Ghare, Advocate for respondent No.1.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 9.1.2020.

1] I have considered the submissions of the learned Advocates for the MSRTC and the employee.

2] Issue raised in these petitions is as regards whether the employee was paid the time scale benefits from 1981 in view of Clause 49 of the Settlement dated 25.4.1956.

3] These parties were before this Court in an earlier round in Writ Petition No.5420/2014. The petitioner was the original claimant before the Labour Court. The claimant had approached this Court since the Labour Court had declined to calculate the legal dues payable to the claimant workman by concluding that it is

unable to calculate the said amount. This Court considered the entire litigation between the parties and after considering the effect of Clause 49 of the Settlement dated 25.4.1956 and Resolution No.8856 read with Clause 19 of the Settlement of 1985, concluded that the Assistant Commissioner, Labour at Nagpur would be an appropriate party to be directed to make the arithmetical calculations. This Court also noted that the workman had been before the Industrial Court and after his right was crystallized, he had moved an application under Section 33C(2) of the ID Act, 1947.

4] This Court, therefore, by judgment dated 13.10.2015 in Writ Petition No.5420/2014 issued the following directions:-

“10. Hence, the following order:

i) The findings recorded by the Labour Court that the petitioner is entitled for the amount of difference of wages and allowances as per the time scale of pay fixed from 4th August, 1981 are maintained.

ii) The Assistant Labour Commissioner, Nagpur shall workout the amount, for which the petitioner is entitled, accordingly.

iii) The Assistant Labour Commissioner shall calculate the amount after considering the documents which may be placed before him by the petitioner as well as the respondent No.1 and after hearing the parties.

iv) The petitioner or his representative and the representative of the respondent No.1

shall appear before the Assistant Labour Commissioner on 12th January, 2016 at 11.00 a.m. and abide by the further instructions in the matter.

v) The Assistant Labour Commissioner, Nagpur shall take final decision regarding the quantum for which the petitioner is entitled till 30th January, 2016.

vi) The amount, which will be determined by the Assistant Labour Commissioner, shall be paid by the respondent No.1 to the petitioner with interest @ 12% per annum, as granted by the Labour Court by the order dated 7th May, 2010 in Complaint ULPN No.40 of 2006, within two weeks.

The petition is allowed in the above terms with costs quantified at Rs. Twenty Thousand to be paid by the respondent No.1 to the petitioner within four weeks.”

5] It is, thus, obvious that this Court had recorded, while allowing the petition, that the amount which will be determined by the Assistant Commissioner, Labour shall be paid by the corporation to the workman with interest at the rate of 12% per annum. It cannot be overlooked that the Labour Court had concluded that the workman has a right to the difference of payment in view of the judgment of the Industrial Court dated 7.5.2010 in Complaint ULP No.40/2006.

6] The learned Advocate for the MSRTC has strenuously criticized the calculations submitted by the Assistant Commissioner, Labour. He submits that after

this matter was heard on 21.11.2016, an *ex parte* ad interim order was granted in terms of prayer clause (b). As the corporation had challenged the calculations of the ACL, Nagpur, this Court had granted *ad interim* relief. Subsequently, this Court heard the parties on 8.2.2017 and while continuing the *ad interim* relief, recorded the details about similarly situated 5 employees having been paid the difference of the time scale and other ancillary benefits, directed that the calculations should be produced before this Court.

7] The learned Advocate for the corporation has drawn my attention to the service book copies placed on record to indicate the quantum of payment being made to the workman. Thereafter, my attention is drawn to page Nos.143 to 171 which is a calculation chart prepared by the Corporation indicating a difference of only Rs.22,592/-, and an amount of Rs.20,398/- was said to have already been paid. The amount to be paid by the corporation was Rs.2,194/-.

8] The learned Advocate for the workman has drawn my attention to the report dated 7.7.2016 filed by the A.C.L., Nagpur. He then points out the observations of the A.C.L. in paragraph Nos.9 and 10 of the report which would indicate that the corporation did not place the documents before the A.C.L. for calculation purposes and merely submitted a chart so as to create an eyewash.

9] The relevant observations appearing in paragraph Nos.9 and 10 read as under:

“9.The non-applicant MSRTC in the calculation sheet has also stated the revised rates for which the applicant is entitled and hence arrived at a calculation of Rs.22,592/-. The MSRTC alongwith the calculation has not filed any documents to show that the amounts stated therein has been actually paid to the applicant employee. Being an employer, it was incumbent upon the non-applicant to file the relevant documents to prove the payments which has been actually done to the applicant as stated in the calculation sheet i.e. document No.2. The applicant in the statement of claim i.e. schedule-A has come up with a specific case that the wages has been paid without bringing him on the time scale and has thus been deprived of revised rates. Being an employer the MSRTC is custodian of all the relevant documents regarding the wages that has been actually paid to the employees. No such documents are placed on record by the non-applicant employer to justify the calculations as given in the document No.2 filed by the MSRTC.

10. The applicant has come up with a

specific case with regard to the payment of wages without bringing on the time scale as per clause 49 of the Settlement dated 25.04.1956. The application in scheduled - A has given the calculation regarding the difference of wages for which the entitlement is being sought. The calculation sheet filed by the MSRTC is prepared as per the order of the Industrial Court which contemplates the payment actually made and the revised payment for which the applicant is entitled. In view of the failure on the part of the MSRTC to furnish the relevant documents with regard to the payment actually made. I therefore hold that the applicant is entitled for difference of wages as under:"

10] It, therefore, appears that the MSRTC found it appropriate to hold back certain documents from the office of the A.C.L. when in fact, this Court had granted an opportunity to both the sides to place their best evidence before the A.C.L. for calculation purposes. Finally, the A.C.L., Nagpur concluded that the amount to be paid to the workman was Rs.12,43,130/- and in the second petition, the amount is Rs.15,94,915/-. These figures pertain to two employees in these two proceedings.

11] In the above backdrop, it would be

appropriate to refer to the directions of this Court issued vide judgment dated 13.10.2015 by which the A.C.L., Nagpur was appointed for enabling the litigating parties to produce material for the purposes of the calculations of unpaid amounts. It was an opportunity to the parties to place relevant evidence before the A.C.L. so as to render proper assistance. This Court had issued a direction at Clause 10(vi) reproduced above that the amounts which will be determined by the A.C.L., shall be paid by the MSRTC to the workman with interest at the rate of 12% per annum from May, 2010. Consequently, the figures will practically double in view of the interest granted by this Court at the rate of 12% per annum vide judgment dated 13.10.2015 which has not been challenged by the MSRTC before the Hon'ble Apex Court and the said judgment has attained finality. The amounts therefore would be about Rs.24,00,000/- and odd and about Rs.30,00,000/- and odd in view of the directions of this Court.

12] The learned Division Bench of this Court has held in the matter of *Shewalkar Developers Ltd., Nagpur V/s Rupee Co-operative Bank Ltd., Pune and others* [2016(1) Mh.L.J.382] that when it comes to a direction for payment of money, if this Court or any Court is to grant an interim protection, at least 50% of the amount will have to be deposited in this Court. The learned Division Bench has cautioned that a blanket stay without a direction to deposit 50% of the amounts, would not be

appreciable.

13] Considering the above, if the interim relief granted by this Court to the MSRTC is to be continued until the final disposal of the writ petitions, it would be appropriate to follow the law laid down by the learned Division Bench in *Shewalkar Developers Ltd., Nagpur V/s. Rupee Co-operative Bank Ltd., Pune and others* (supra).

14] The workman has moved Civil Application Nos.2322/2017 in the first petition and 2323/2017 in the second petition for seeking modification of the interim order as this liberty was granted to him by this Court vide order dated 8.2.2017 when these two petitions were admitted. The *ex parte ad interim* relief granted earlier was to be continued until further orders subject to any modification.

15] In view of the above, both these civil applications are **partly allowed**. The interim relief granted by this Court would continue till the disposal of these two petitions on the condition that the MSRTC shall deposit an amount of Rs.12,00,000/- and Rs.15,00,000/- in these two respective petitions as 50% of the total amounts granted by this Court inclusive of 12% interest from May 2010. The MSRTC is granted time up to 29th February, 2020 to deposit these amounts in this Court.

16] The learned Advocate for the corporation makes a request that since public money is involved, this Court may list these two petitions for final hearing so that this issue can be resolved expeditiously. The learned Advocate for the workman also joins the learned Advocate for the petitioner in making the same request.

17] In view of the above, these two petitions shall be listed for final hearing on **11.6.2020**.

(RAVINDRA V. GHUGE, J.)

Tambaskar.