

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8983 OF 2019

- | | |
|---|--|
| <p>1. The Superintending Engineer
Public Works Department,
Circle Office, Bandhkam Bhavan,
Adalat Road, Aurangabad</p> <p>2. The Executive Engineer,
Public Works Division
at Jalna, Tal. & Dist. Jalna</p> | <p>... Petitioners
(Orig. Respondents)</p> |
|---|--|

Versus

- | | |
|--|---|
| <p>1. Shaikh Jabbar s/o Shaikh Husain
Died through his L.Rs</p> <p>1A. Smt. Shejeda Begam Shaikh Jabbar
Age 60 years, Occu. Household</p> <p>1B. Shaikh Javed s/o Shaikh Jabbar
Age Major, R/o. J S College Power Room
Jalna</p> <p>1C. Shaikh Firoz s/o Shaikh Jabbar
Age Major, R/o Panaychi Takki road,
Filter bet Jalna</p> <p>1D. Shaikh Afroz s/o Shaikh Jabbar
Age Major, R/o Collage Road,
Near Filter bet, Jalna</p> <p>1E. Sayra Begum Shaikh Akhil
Age Major, R/o H No.4-13-51
Baijipura, Khas Gate,
Aurangabad</p> | <p>...(Orig.Complainant)</p> <p>... Respondents</p> |
|--|---|

....
Mr. N. T. Tribhuwan, AGP for the petitioners
Mr. R. K. Khandelwal, Advocate for the respondent
....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 10th FEBRUARY, 2021
PRONOUNCED ON : 10th JUNE, 2021

ORDER :-

. The challenge in this writ petition is to the judgment and order dated 20.07.2018, passed by the Member, Industrial Court, Jalna, in Complaint (ULP) No.12 of 2017. By the impugned order, the Industrial Court has allowed the complaint and directed the petitioners herein to accord pay scale of the post of Driver to the complainant/respondent with effect from 01.03.1984. The order was directed to be complied with within a period of one month from the date of its communication.

2. The petitioner No.1 is the Superintending Engineer, Public Works Department (P.W.D.). The petitioner No.2 is the Executive Engineer of P.W.D. at Jalna. The Complaint (ULP) No.12 of 2017 was filed by the original respondent contending that he joined the service with petitioner No.2 as a Cleaner on 16.12.1977 on daily

wages. He continued to work till 16.12.1982. His services came to be confirmed in terms of the settlement/award by '*Kalekar Committee*'. He was brought on C.R.T. with effect from 16.12.1982 and given the pay scale of the Cleaner. He was assigned the work of Driver since 01.03.1984. He continued to work as Driver until he retired on superannuation in the year 2013. He, therefore, claimed pay scale of Driver from the date he was directed to work as a Driver to the date of 28.09.2003, on which he was in fact granted the pay scale of the post of Driver.

3. Before the Industrial Court, the petitioners did not appear in spite of service of notice of the proceedings. The complaint was therefore heard *exparte* against them. On appreciation of the evidence in the case, the Industrial Court passed the order impugned in this petition.

4. Heard.

Shri N. T. Tribhuwan, learned Assistant Government Pleader (AGP), appearing for the petitioners would submit that the complaint was decided *exparte*. There was considerable delay in filing the complaint. The original complainant/respondent was granted the pay scale of Driver with effect from 28.09.2003, vide

G.R. dated 29.09.2003. According to the learned AGP, the petitioners need to be given an opportunity of hearing. The matter, therefore, be remanded to the Industrial Court. The learned AGP would, further submit that the post of the Driver was not available during the period for which the salary of the post of Driver has been asked for. The original respondent was not appointed on regular basis to the regular post after selection according to the rules. In support of his submissions, the learned AGP relied on the judgment of this Court dated 20.09.2001, passed in ***Writ Petition No.1740 of 2000 (Chief Executive Officer, Zilla Parishad, Osmanabad vs Rama Ananda More)*** and other connected writ petitions.

5. Shri R. K. Khandelwal, learned Advocate for the respondent, supports the impugned order.

6. Admittedly, the original respondent/complainant had joined the service with petitioner No.2 as a Cleaner with effect from 16.12.1977, on daily wages. On completion of five years of service as a Cleaner, he was confirmed in service. He was brought in the establishment on C.R.T. with effect from 16.12.1982 and given the pay scale of the Cleaner. It has further been admitted that although the original complainant/respondent was a Cleaner, he was assigned

the work of Driver with effect from 01.03.1984. He continued to serve as a Driver until he retired on superannuation on 31.03. 2013.

7. The State of Maharashtra, vide G.R. dated 29.09.2003, decided to give pay scale of the post on which the employees had, in fact, been serving, although they were holding an interior post. Since the original complainant/respondent was working as a Driver, although he was holding the post of a Cleaner, he came to be granted pay scale of a Driver with effect from 29.09.2003. He had, accordingly, been paid the salary with effect from the said date to the date of his retirement. The G.R. specifically states that no employee would be paid arrears.

8. The original complainant had filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947, before the Labour Court, Aurangabad and claimed difference of salary from 01.03.1984 to 29.12.1987. The said proceeding went unchallenged. The Labour Court passed the order on 20.12.1991, directing the petitioners to pay the original complainant, the difference of amount. The said order has been complied with without any demur.

9. Since the original complainant had admittedly worked as a Driver with effect from 01.03.1984, he deserves to be paid monetary benefits (salary) attached to the post of a Driver. The petitioners could not be benefited on relying on the judgment of this Court in the case of the *Chief Executive Officer, Zilla Parishad, Osmanabad vs Rama Ananda More* (supra) since the claim therein was for regularisation on the post. Here, the original complainant simply claimed monetary benefits attached to the post of a Driver. He did not ask for making him permanent on the said post with effect from the date he was assigned the work of a Driver. On the principle of equal pay for equal work, the original complainant thus became entitled for grant of salary of the post of the Driver. In the complaint itself, he had explained as to why he did claim the said benefit in the later part of his service, as according to him he did not want to invite wrath of the higher ups. It is true that the original complainant has raised the claim belatedly. The petitioners, however, did not offer any reason as to why they could not appear before the Industrial Court and resist the complaint. Their prayer for remand, therefore, could not be accepted.

10. Pending the petition, the original complainant passed away.

11. The petitioners have deposited the amount of arrears payable to the original respondent pursuant to the impugned order. The calculations indicate that the amount that has become payable, is not more than Rs.1,00,000/- (Rupees One Lakh). In this factual backdrop, I am not inclined to interfere with the impugned order. The writ petition therefore fails and is thus, dismissed.

12. The amount deposited in this Court pursuant to the order dated 19.08.2019, be paid to respondent Nos. 1A to 1E.

[R. G. AVACHAT, J.]

SMS