

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

WRIT PETITION NO. 940 OF 2014

PETITIONER: City of Nagpur Municipal Corporation, through its
Municipal Commissioner, having its office at
Civil Lines, Nagpur.

...VERSUS...

RESPONDENT: Sushma Bhimrao Dupare, aged 49 years,
Occupation : Service, R/o. MIG Colony,
28/6, Trimurty Nagar, Nagpur.

Shri S.N.Bhattad, Advocate for petitioner.
Mr. V.P.Marpakwar, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 21/10/2021.

1] Heard Shri Bhattad, learned advocate for petitioner and
Shri Marpakwar, learned AGP for respondent.

2] The petition challenges the judgment by the learned
Industrial Court, Nagpur, in Complaint ULP No. 242 of 2006
whereby the petitioner has been directed to pay the difference in
salary of the post of Assistant Librarian to the complainant from
21.8.1997 onwards, within a period of six month from the date of

the order and to continue to pay equal wages to the complainant like a regular Assistant Librarian in the future. The further direction to consider the case of the Respondent sympathetically as and when the recruitment to the post of Assistant Librarian would be done, is rendered redundant for the reason that the respondent has attained the age of superannuation on 30.09.2020.

3] Mr. Bhattad, learned counsel for the petitioner submits that the entire case of the respondent was relating to her working as a Library Assistant and therefore the direction contained in operative clause (iii) of the impugned judgment to the extent it indicates the respondent to be entitled to salary for the post of Assistant Librarian and directs to continue to pay equal wages to the complainant, like a regular Assistant Librarian in future, was clearly unwarranted, as it was not even the case of the respondent that she was appointed as Assistant Librarian.

4] In so far as this contention is concerned, Mr. Marpakwar, learned counsel for respondent does not dispute that what was claimed and granted was the entitlement of the

respondent to the post of Library Assistant and not as an Assistant Librarian, which is a post higher to that of Assistant Librarian, in view of which the direction as contained clause (iii) of the operative part of the judgment dated 8.11.2013, as indicated above, cannot be sustained and the post of Assistant Librarian as stated therein shall have to be read as that of a Library Assistant.

5] The next bone of contention is the claim for difference in wages inasmuch as the respondent has claimed the difference in salary of the post of Library Assistant from 21.8.1997 onwards. At the outset, it would be material to note that the present petition does not question the regularization of the respondent, as that issue was specifically given up, as is indicated by the order dated 16.4.2014. That leaves us only with the claim regarding difference in wages, which has been granted by the learned Industrial Court w.e.f. 21.8.1997.

6] Mr. Bhattad, learned counsel for the petitioner by relying upon **Narendra Shaligram Thakre and ors vrs. Nagppur Municipal Corporation and anr [2006 (4) ALL MR 507]**, submits

that in similar circumstances, this Court though has accepted the plea for regularization, however has declined to grant the difference in wages and the only benefit which has been granted is continuity and seniority for the purpose of calculation of pension and gratuity only. He further places reliance upon **City of Nagpur Corporation .Vrs... Haribhau Narayan Bhandarkar , Writ Petition No. 512/2004** and connected matters, wherein relying upon **Narendra Thakre** (Supra), the claim of the petitioners therein, including that of Shri Ajay Shankarrao Kakirwar, whose services were also directed to be regularized and who had also claimed difference in wages, was directed to be governed by what was stated by this Court in para 19 in the case of **Narendra Thakre** (supra).

7] Mr. Bhattad learned counsel for the petitioner submits that the case of the present respondent and that of Ajay Shankarrao Kakirwar is identical in nature, except for the difference in post, inasmuch as Ajay Shakarao Kakirwar was employed as labour and subsequently his services were regularized and therefore, what has been stated in **Haribhau Narayan Bhandarkar** (supra) should also govern the case of the present respondent and to that

extent the judgment of the learned Industrial Court needs to be modified. He further invites my attention to the so called resolution dated 21.8.1997 and submits, that in so far as the present respondent is concerned, there is no approval to the resolution proposed and seconded in her favour, which would indicate that in absence of any such approval by the House of the petitioner, the date of 21.8.1997, cannot be considered to be the starting point from which the respondent could claim the wages and therefore, the finding rendered by the learned Industrial Court in this regard, in his submission, is without any basis altogether.

8] Mr. Marpakwar, learned counsel for the respondent submits that the respondent is entitled to difference in wages on the ground of 'equal pay for equal work' and though the respondent was working as a Library Assistant from 4.7.1986 and onwards, till her superannuation on 30.9.2020, which position is not disputed by the petitioner, the learned Industrial Court has granted the difference in wages only from 21.8.1997, whereas the respondent was indeed entitled for difference in wages from 4.7.1986, however, in absence of any challenge to that finding, he

submits that the entitlement for difference in wages at least from 21.8.1997 cannot be disputed. He further submits that in the case of one Omkar Lakhe, who was also appointed as a Library Assistant with the petitioner, in whose favour a resolution was passed on 21.8.1997, the petitioner has already granted him the benefit of difference in salary in view of the order dated 23.12.1991, passed in Complaint ULP No. 641/1987. He further submits that it would have been a different case altogether if the respondent had not worked with the petitioner, in which case the claim for denial of equal wages could be justifiable, which according to him, is not so in the present case. The learned counsel further relies upon the judgment in the case of Rashtriya Nagpur Corporation Employees Association vrs. Nagpur Municipal Corporation in Complaint ULP No. 377/2011, decided on 25.6.2018, wherein the claim of 37 employees, who were engaged as lorry drivers, but were shown as Safai Kamgar, for grant of regularization, was accepted and all the service benefits including time bound higher pay scale from the date of their eligibility was granted to them, challenge to which in W.P. No. 5512/2011 and W.P. No. 2433/2019 came to be rejected by this Court by judgment dated 17.6.2019 and a Special Leave Petition No. 21925/2019 against

which, came to be dismissed on 31.01.2020. He therefore submits that having worked for the Corporation, the respondent was clearly entitled for difference in wages as granted by the learned Industrial Court and the judgment to that extent, ought to be maintained.

9] It is not disputed by Mr.Bhattad, the learned counsel for the petitioner that the respondent has indeed worked for the petitioner Corporation from 4.7.1986 as a Library Assistant, though her appointment was shown as that of a Chowkidar. It is therefore clear that whatever be her designation, the petitioner has indeed extracted the work of a Library Assistant from the respondent since 4.7.1986 onwards, till her superannuation on 30.9.2020. Since the respondent has indeed performed the work of a Library Assistant, which position is not disputed, it cannot be denied that she would be entitled to difference in wages for the said post, in view of which, the direction as contained in the impugned judgment to this extent cannot be faulted with. Though Mr. Bhattad, learned counsel for the petitioner has relied upon **Narendra Thakre** and **Haribhau Bhandarkar** (supra), it is material to note that the Court therein, though had held that the Corporation had indulged in unfair

labour practice by violating Standing Order No.4B by not giving permanency to the petitioners based upon the factual position, had declined, in the facts and circumstances therein, to burden the Corporation with any financial liability which was a matter of exercise of discretion based upon the facts prevailing in the said cases and thus cannot be considered to be a position of general applicability.

10] In the instant matter, considering the admitted position that the respondent has indeed worked for the petitioner as Library Assistant, the case has to be viewed on the footing as enunciated, of a similar employee namely Omkar Lakhe, whose case has been considered by the learned Industrial Court and who has been granted the difference in salary of Library Assistant. A similar claim though in the case of Safai Kamgar as raised in the case of **Rashtriya Nagpur Corporation Employees Association** (supra), has been upheld by this Court, which has in turn being confirmed by the Hon'ble Apex Court. The petition, therefore, is partly allowed. The impugned judgment is modified to the extent it records the difference in salary and other benefits to be given to the respondent

as Assistant Librarian and it is clarified that the respondent shall be entitled to the difference in salary and wages as payable to the post of Library Assistant only.

10] Rule is made absolute in the above terms. In the circumstances there shall be no order as to costs.

JUDGE

Rvjalit