

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

LETTERS PATENT APPEAL NO.559/2010 IN WRIT PETITION NO.736/2006(D)

- APPELLANTS** : 1. Radial Gate Erection Office/Section,
Totladoh, Tq. Ramtek District Nagpur
2. Radial Gate Erection Sub-Division
No. 1 Behind Sadar Police Station,
Sadar, Nagpur through its Sub-
Divisional Officer/ Deputy Engineer
3. Radial Gate Erection Division
Chief Gate Erection Unit No.2,
Central Work Shop, Gaddigudam, Nagpur.
4. Radial Gate Erection Division,
Vainganga Nagar, Ajni, Nagpur.
Through its Superintending Engineer.
5. The Chief Engineer,
Irrigation Department (Mechanical)
Trumbakeshwar Road, Nashik.

//Versus//

RESPONDENT : Siddhartha s/o Mahadeo Nakhale (Dead through LRs)

- 1(a). Smt. Sunanda wd/o Siddharth Nakhale (wife)
1(b) Shri Rahul s/o Siddharth Nakhale (son)
1(c) Shri Pankaj s/o Siddharth Nakhale (son)
1(d) Shri Vishal s/o Siddharth Nakhale (son) and
1(e) Shri Majoj s/o Siddharth Nakhale (son)

All R/o. Ambadi, Gandhi Ward, Plot No.42,
Post Silli, Tq. And District Bhandara-441 324.

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Mrs. S.S.Jachak, Assistant Government Pleader for appellants.
None for the respondents.

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CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.
DATED : 16th September, 2021.

Oral Judgment : (Per A.S.Chandurkar, J.)

The judgment of learned Single Judge dated 25.03.2010 in Writ Petition No.736/2006 is under challenge in this Letters Patent Appeal.

2. The predecessor of the present respondents was appointed on the post of 'Electrician' from 19.07.1982 on daily wages. On completion of five years service, he was brought on Converted Regular Temporary Establishment (CRTE) in the pay scale of Rs.1200-1800. The respondent received his salary as 'Electrician' till 31.12.1991. Thereafter by the order dated 06.01.1992 he was brought on the post of 'Junior Electrician'. This was on the basis of corrigendum dated 23.10.1991 issued by the appellants treating him as 'Junior Electrician'. Since according to the original respondent the aforesaid action amounted to committing an unfair labour practice, he filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the said Act') invoking the provisions of Item 9 of Schedule-IV to the said Act. According to the appellants, it was admitted that five years continuous service had been rendered by the respondent. It was their case that the respondent was wrongly placed as 'Electrician' in the pay scale of Rs.1200-1800 and on realizing the said mistake, he was brought on

CRTE as a 'Junior Electrician' in the pay scale of Rs.950-1400. A stand was taken that the respondent was always working as 'Junior Electrician'.

3. The parties led evidence before the Industrial Court and the learned Judge of the Industrial Court after considering the same recorded a finding that since his appointment, the original respondent was working as 'Electrician'. There was no evidence to show he ever worked as 'Junior Electrician'. There was no basis for bringing him on the post of 'Junior Electrician' and hence there was no question of re-fixation of his position. The Industrial Court allowed the complaint filed by the respondent on 25.04.2005 and directed repayment of any excess payment recovered from him. The learned Single Judge after considering the challenge raised to the order dated 25.04.2005 passed by the Industrial Court was pleased to confirm the same. Hence this Letters Patent Appeal.

4. Heard Mrs. S. S. Jachak, learned Assistant Government Pleader for the appellants. She submits that since the original respondent was wrongly shown as 'Electrician' when he was appointed in the year 1982, a corrigendum dated 23.10.1991 was issued for correcting the said mistake. She sought to demonstrate that the original respondent did not have any right to hold the post of

‘Electrician’ but was entitled to hold the post of ‘Junior Electrician’. It was submitted that since his designation was wrongly shown, the mistake was duly corrected and no relief could have been granted to the original respondent.

5. After hearing the learned counsel for the appellants and after perusing the material on record, it is clear that there is evidence on record to indicate that since inception the original respondent was working as ‘Electrician’ and was being paid salary in the pay scale of Rs.1200-1800. A finding has been recorded in paragraph 8 of the judgment of the learned Single Judge that though it was the case of the appellants that the original respondent was working as ‘Junior Electrician’, there was no evidence brought on record in that regard. It has been found that the appellants were not in a position to justify the legality of the order passed by them re-fixing the position of the respondent on the post of ‘Junior Electrician’.

6. Considering the findings recorded by the Industrial Court which has been subsequently confirmed by the learned Single Judge, we do not find any reason to take a different view as the said findings are based on material available on record. No other view is possible than the one that has been taken.

7. Accordingly we do not find any merit in the Letters Patent Appeal. It is dismissed with no orders as to costs.

JUDGE

JUDGE

Andurkar..