

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2351 OF 2020
WITH WP/2579/2020 WITH WP/2635/2020 WITH WP/2352/2020
WITH WP/2358/2020 WITH WP/2360/2020 WITH WP/2580/2020
WITH WP/2361/2020 WITH WP/2355/2020 WITH WP/2356/2020
WITH WP/2357/2020 WITH WP/2359/2020 WITH WP/2427/2020
WITH WP/2353/2020 WITH WP/2354/2020

THE CHIEF EXECUTIVE OFFICER ZILLA PARISHAD DHULE AND
ANOTHER
VERSUS
ATMARAM DAMU PATIL

Mr.N.N.Desale, Advocate for the petitioners.
Mr.Shrikant S.Patil, Advocate for the respondent.
Mr.N.T.Bhagat, AGP for State.

(CORAM : RAVINDRA V. GHUGE , J.)

DATE : MARCH 15, 2022

PER COURT :

1. WP No.2356/2020 pertains to the original complainant namely Ravindra Vishwanath Bhamare and the learned Advocate for the Zilla Parishad has been informed to withdraw the said proceedings. The learned Advocate for the respondent confirms the said statement and in fact submits that it is he who has brought this fact to the notice of the learned Advocate for the Zilla Parishad. As such, this petition is disposed off as withdrawn, on instructions.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides on 14.03.2022 and 15.03.2022. All the respondents are original complainants before the Industrial Court who have preferred individual ULP complaints invoking Items 5, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 (The State Act). The reason for preferring the complaints before the Industrial Court is the notice issued by the petitioner dated 22.03.2018 stating therein that the Zilla Parishad desires to re-assess the benefits of the "time bound promotional pay scale/assured career progression scheme" given to these respondents.

3. A notice of change under Section 9-A r/w the 4th Schedule under the I.D.Act, 1947 (Central Act) was not issued. The impugned notice was not under Section 9-A and only 8 days time was given to the complainants to submit their written say as regards the restructuring of their pay scales. No reference in the notice has been made to the GR dated 28.07.2014. The complainants, therefore, approached the Industrial Court and this has led to delivering of the impugned judgment of the Industrial Court in which following are the directions issued by the Court :-

ORDER

1. *Complaint (ULP) No.5/2018 is hereby allowed with costs of Rs.7,000/-*
2. *It is hereby declared that, the respondents have been engaged in unfair labour practices falling under Items 5, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 by issuing the impugned notice for revision and refixation of the pensionary pay and allowances of the complainant.*
3. *The respondents are hereby directed to cease and desist from being engaged in any unfair labour practices regarding revision and refixation of the pay and allowances of the complainant.*
4. *It is declared that, the impugned notice bearing No. पं०सं० / लसिंवि / आस्था / ११६ / २०१८ dated 22/03/2018 is illegal and the same is hereby quashed and set aside.*
5. *The respondents are hereby directed to pay the pensionary pay and allowances of the complainant without effecting the change as proposed by the impugned notice.*
6. *The respondents shall repay the amounts of deductions effected, if any, by the revision and refixation of the pay and allowances by the impugned notice along with interest at the rate of 6% p.a. for the period from the date of this complaint till its realization, within a period of two months from the date of this order."*

4. In the light of the extensive submissions of the learned Advocates for the respective sides and the various orders/judgments delivered by

this Court, there is no dispute that the complainants were entitled to receive promotional benefits without an actual promotion after completing 12 years of service from the date of their regularization on the post on which they were appointed. This is on the basis of the GR dated 08.06.1995 applicable to the Group 'C' and Group 'D' (erstwhile class III and Class IV) employees.

5. It requires no debate that the said GR was introduced in view of there being stagnation in promotional avenues and several employees getting stagnated on particular positions having reached the maximum pay scale applicable to that position. The State Government, therefore, decided to grant promotional pay scale benefits to such stagnated employees without actually granting them a promotion to a higher position. At one level, the workers falling in such grades were converted into civil Engineering Assistants which was on account of the merger of Mistry Grades-I and II. The litigation in hands is in the light of such benefits that were extended to the complainants as per the GR dated 08.06.1995.

6. The Zilla Parishad has taken a stand before the Industrial Court

as well as this court that the Government Circular dated 28.07.2014 pertains to the Civil Engineering Assistants, who were entitled for time bound promotional benefits/Assured Progress benefits. Those who have assumed the position of Civil Engineering Assistant, are entitled for further benefits of such nature after completing 12 years post the merger of MG-I and II. The first promotional benefit available to such complainants was, admittedly, from the dates they were regularized in their respective positions.

7. The learned Advocate for the petitioner Zilla Parishad has placed on record a compilation of 4 pages received by him officially from the Zilla Parishad. The said 4 pages are taken on record and marked as "X-1" collectively for identification. In the light of X-1, it is apparent that these employees have been regularized in their employment from the dates mentioned in Column V on page No.1 and Column VI on page No.3 below "X-1". 7 employees mentioned at Sr.Nos. 1 to 7 have been regularized in service w.e.f. the dates they have joined the employment as Tracers (2 persons) and Mistry Grade II (5 persons). On page No.3, 8 persons have different joining dates, all in MG-II and all of them have been granted regularization after around 4 to 10 years, as is evident

from Column VI on page No.3.

8. The first promotional benefit is available to them by way of promotional pay scale, within 12 years from the date of their regularization. Page No.2 below X-1 indicates 7 complainants who have been granted their first benefit after completion of 12 years. On page No.4 below X-1, 7 out of the 8 complainants have also secured their first time bound promotional benefit. Serial No.8 Satish Digchand Patil, has received the first time bound promotional benefit on 10.12.1994, the second benefit on 09.12.2006 and the third benefit on 23.03.2013 w.e.f. 01.01.2016. None of the parties are absolutely sure that such a third benefit is available or not. Such benefits are said to be available on completion of 12 years period of employment after being granted regularization. The compilation of the documents X-1 is made a part of this order and parties seeking a certified copy of this order shall also be delivered a copy of X-1.

9. The Industrial Court, Dhule has delivered an unusually longish judgment. The sum and substance of the conclusion of the Industrial Court is that the Zilla Parishad could not have initiated a re-verification

of the benefits extended to these complainants after their retirement. The Zilla Parishad has made it very clear in its impugned notice that it did not intend to seek recovery of the monetary benefits extended to these complainants. What was intended is, by virtue of the Government Circular dated 28.07.2014, that the Zilla Parishad wanted to reassess the quantum of benefits extended and re-fix the pay scales of these complainants so as to re-calculate the pensionary benefits. Most of the complainants had superannuated when they received the impugned notices and around 6 of the complainants retired post receipt of the notice.

10. Considering the above, the impugned judgment of the Industrial Court in all these matters calls for interference only to the extent of the declaration of ULP under Items 5 and 10 of Schedule IV. There is hardly any evidence in so far as the Zilla Parishad having shown undue favoritism or partiality to one set of workers regardless of merits. The conclusion of the Industrial Court that a ULP under Item 10 is proved, is beyond comprehension. The Zilla Parishad has neither exerted any force nor indulged in an act of violence against the complainants. So also, the introduction of the circular dated 28.07.2014 would not

permit the Zilla Parishad to re-visit the pay structuring of the complainants for re-calculating their pensionary benefits, after the retirement of 9 complainants. Their action of re-assessing the pay scales of those employees who had not retired from service (6 complainants) when they approached the Industrial Court, could be permitted, however, by restraining the recovery of the amounts already paid either while in service or after attaining superannuation during the pendency of the ULP complaints, till today.

7. In view of the above, Writ Petition Nos. 2351/2020, 2352/2020, 2353/2020, 2354/2020, 2355/2020, 2356/2020, 2357/2020, 2358/2020, 2359/2020, 2360/2020, 2447/2020, 2579/2020, 2580/2020 with regard to the complainants who had superannuated from service prior to the filing of the ULP complaints, stand partly allowed only to the extent of quashing the declaration of ULP under Item 5 and 10 of Schedule IV.

8. Writ Petition Nos.2361/2020 and 2635/2020 in relation to Shri Sunil Vithal Patil and Shri Vijay Ramrao Pawar respectively are partly allowed as under :-

[a] The declaration of unfair labour practice under Item Nos. 5 and 10 of Schedule IV is quashed and set aside.

[b] The petitioner is at liberty to assess whether the pay fixation (forming a basis of the pension that became payable to these complainants after their superannuation during the pendency of the ULP complaints) is correctly done in view of the circular dated 28.07.2014. Needless to state, a notice u/s 9-A of the I.D.Act, 1947 with 21 days period mentioned therein, may be issued to these respondents who will participate in the said proceedings as is permissible under the Industrial Disputes Act, 1947.

(c) After a decision is delivered by the competent authority under section 9-A, they would be at liberty to avail of a remedy as is permissible under I.D.Act, 1947.

[d] In the event, the decision under Section 9-A results in identifying those complainants who are paid excess pensionary benefits and will continue to earn them in future based on incorrect pay fixation, will not be liable to refund the amounts already paid to them, till today.

[e] All contentions of the litigating parties, inclusive of whether the GR dated 08.06.1995 would render the circular dated 28.07.2014 inoperable, are kept open.

(RAVINDRA V. GHUGE, J.)