

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

WRIT PETITION NO.7308 OF 2019

Divisional Controller
Maharashtra State Road Transport
Corporation, Osmanabad
Osmanabad Division.

..Petitioner

Versus

Shri. Ravindra Narayan Jadhav,
Age: 50 years, Occu.: Service,
R/o. Sampada Niwas, Sambhaji Nagar,
Diksal, Tq. Kalamb.

..Respondent

...

Mr. Dipesh D. Pande h/f Mr. D. S. Bagul, Advocate for the
Petitioner.
Mr. P. V. Barde h/f Mr. D. A. Madke, Advocate for Respondent.

...
CORAM : SANDEEP V. MARNE, J.
DATED : 06th DECEMBER, 2022.

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By this petition petitioner-Corporation challenges the judgment and order dated 15.03.2018 passed by the Industrial Court, Latur in Complaint ULP No.178/2014.

3. I must observe at the very outset that the Industrial Court has issued vague directions to petitioner-Corporation in the operative portion of its order as under:

“1. Complaint is partly allowed in the following terms.

2. It is declared that the respondent has engaged in unfair labour practice against the complainant under Item

No.9 & 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971. The respondent is directed to cease and desist from such unfair labour practices in future.

3. The respondent is directed to grant to the complainant pay scale and consequential benefits as per applicable rules, regulations, circulars and pay accordingly in pursuance of Exh.U/25.

4. The respondent is directed to pay the difference of pay scale, within a period of 3 months from the date of order. Otherwise the same shall be carry interest @ 8% per annum.

5. No order as to cost.

6. Proceedings are closed.”

4. The reasons recorded by the Industrial Court for issuing the above directions are as under:

“By way of Exh. U/25 the complainant has demonstrated pay fixation of similarly situated workman. The pay fixation of the said workman clearly demonstrate that he has been given benefits of the settlements entered into by the respondent Corporation with the workmen as well as of regular pay scale on completion of 5 years in service. Therefore I am of the opinion that the complainant is also entitled for such identical benefits being similarly situated. From the perusal of calculation produced by the respondent it is seen that the pay fixation of the complainant is wrongly arrived at. The respondent has not taken a stand that the calculations submitted at Exh. U/25 are incorrect. Therefore I find that the complainant is also entitled for similar benefits. In the background of above discussion I find that the complainant is entitled for correct fixation of pay scale as per the applicable rules, regulations, settlement, circular and in consonance with Exh. U/25. Therefore, the Additional Issue No.2-A is answered accordingly.”

5. Thus, it appears that the Industrial Court has compared the case of respondent with Shri. B. G. Bhusare and has apparently directed grant of same pay to respondent on par with Shri. Bhusare. Though there is no specific direction to this effect

in the operative portion of the order, from the reasoning extracted hereinabove, it appears that the Industrial Court has expected petitioner-Corporation to pay same pay scale and pay to respondent as that of Shri. Bhusare.

6. The main grouse of respondent before the Industrial Court was non-grant of pay protection upon being appointed as Security Guard in the petitioner-Corporation. Before joining petitioner-Corporation, he was working in the Indian Army and came to be recruited as an Ex-serviceman. The last pay drawn by him in the Army was Rs.4100/-. The other grievance of respondent is on account of comparison of his case with Shri. B. G. Bhusare, another Security Guard recruited in similar capacity as Ex-serviceman.

7. In pursuance of the directions issued by this Court in order dated 30.07.2019, petitioner-Corporation has filed an affidavit dated 18.09.2019 along with comparative statement of pay fixation of respondent and Shri. B. G. Bhusare. The statement shows that Shri. Bhusare joined service on 01.02.2003 whereas respondent joined service on 29.03.2005. So far as the first grievance of pay protection of respondent is concerned, the statement shows that he was paid basic pay of Rs.1525/- + Rs.2575/- personal pay (totaling Rs.4100/-) with effect from the date of his appointment of 29.03.2005. The respondent's last pay drawn in Army was Rs.4100/-. Thus, it appears that with a view to match the basic pay drawn by respondent in the Army, he was granted additional personal pay of Rs.2575/- so as to bring his total basic pay on par with last pay drawn by him in the Army of Rs.4100/- Thus first grievance of respondent about grant of pay protection was thus met with.

8. So far as the second grievance of Respondent is concerned, the same stems out of comparison of his pay fixation with that of Shri. Bhusare. On account of joining service on 01.02.2003, Shri. Bhusare completed five years of service on 01.02.2008 and brought on regular pay scale of Rs.2400-4145 fixing his basic pay at Rs.3925/- + Rs.35/- personal pay. As on 01.02.2008, respondent was yet to complete five years of service. In the meantime, on 01.04.2008 wage settlement agreement was entered into, on account of which and by applying formula of wage settlement, the basic pay of Shri. Bhusare was increased from 3925+ 35/- to 7988/-. Respondent was also granted the benefit of wage settlement thereby increasing his basic pay from Rs.1600/- to Rs.3256/-. This was done by applying formula of wage settlement. As the pay of Rs. 3256 was falling short of last pay drawn in Army of Rs. 4100, personal pay of 488/- was awarded. The respondent thereafter completed five years of service on 29.10.2010 and was placed in the regular pay scale of Rs.4180-13675 fixing his basic pay at Rs.4180/-. *(since now pay exceeded last pay drawn in Army of Rs. 4100, special pay was discontinued).*

9. In the above manner, respondent was granted twin benefits of fixation as per wage settlement as well as bringing over to regular pay scale on completion of five years of service on par with Shri. Bhusare. However, only on account of the fortuitous circumstance of Shri. Bhusare completing five years of service in same year when the wage settlement becoming applicable, he got both the benefits of fixation in regular pay scale plus benefit of wage settlement in the same year. As against this, respondent having been appointed later on 29.03.2005 got only the benefit of

wage settlement in the year 2008 and regular pay scale was extended to him later in the year 2010. As he was drawing sumptuous personal pay to match last pay drawn in Army of Rs. 4100, eventhough he got a jump in basic pay from Rs.1600/- to Rs.3256/- on account of wage settlement agreement, the jump could not be perceived as he was already drawing total basic pay of Rs. 4100 on account of personal pay. This is possibly the reason why Respondent felt heartburn by comparing himself with Shri. Bhusare.

10. Having minutely gone through the comparative chart produced by petitioner-Corporation showing pay fixation in the case of respondent and Shri. Bhusare, I am of the view that, respondent could not be placed on par with Shri. Bhusare on account of the above circumstances. As observed hereinabove, respondent is already granted benefit of pay protection by extending him additional personal pay of Rs.2575/- increasing his total basic pay at Rs.4100/- on the date of his initial appointment on 29.03.2005. He is granted the benefit of wage settlement increasing his basic pay from Rs.1600/- to Rs.3256/-. He is also granted the benefit of fixation in regular pay scale after completion of 5 years of service.

11. Resultantly no case was made out by respondent for interference by the Industrial Court. Without undertaking the basic exercise of comparing the pay fixation of respondent and Shri. Bhusare, Industrial Court blindly issued directions to extend the same benefit to respondent on par with Shri. Bhusare. The order passed by the Industrial Court is therefore indefensible and deserves to be set aside.

12. Mr. Barde, the learned counsel appearing for respondent submits that Respondent has retired from service on 30.04.2022. He would further submit that the implementation of the actions and decisions of petitioner-Corporation which were subject matter of challenge before the Industrial Court may result in some recovery from respondent. His submission is referable to the observations of the Industrial Court in paragraph no.2 of the order which reads thus:

“Respondent by issuing order No.5185/2014 cancelled all previous pay fixation orders of the complainant and thereafter the basic wages of the complainant is reduced from 6148/- to 6032/-. Thus the complainant is made to suffer without there being any fault on his part.”

13. Relying on the judgment of the Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334**, Mr. Barde would contend that since respondent has retired from service and pay fixation was done long back, no recovery can be permitted at this stage. I am in agreement with this submissions of Mr. Barde. Therefore, even though the order of Industrial Court deserves to be set aside, petitioner-Corporation cannot be permitted to effect any recovery from respondent on account of pay fixation. Accordingly, I proceed to pass following order:

ORDER

- a. The judgment and order dated 15.03.2018 passed by Industrial Court, Latur in Complaint ULP No.178/2014 is set aside.
- b. The petitioner-Corporation is however restrained from effecting any recovery from respondent on account of his pay fixation.

- c. With the above directions, writ petition is allowed.
- d. Rule is made absolute in above terms.

(SANDEEP V. MARNE)
JUDGE

Devendra/December-2022