

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3882 OF 2018

Shri Tuljabhavani Engineering College,
Tq. Tuljapur, Dist. Osmanabad,
Through i/c. Principal

...Petitioner
(Ori. Complainant)

Versus

Ashok s/o Vishwanath Chatre,
Age: 67 Years, Occu: Retired,
R/o. Near Prabhakar Lodge,
Ghatshil Road, Near Parking,
At.Post. Tq. Tuljapur,
Dist. Osmanabad.

...Respondent
(Ori. Respondent)

Mr P.P. Mandlik, Advocate for Petitioner
Mr S.A. Ambad, Advocate for Respondent Sole

WITH
WRIT PETITION NO. 2054 OF 2018

Shri Tuljabhavani Engineering College,
Tq. Tuljapur, Dist. Osmanabad,
Through i/c. Principal

...Petitioner
(Ori. Respondent)

Versus

Netaji s/o Kashinath Survase (Died L.R.s)

1-A- Rekha w/o Netaji Survase,
Age: 51 Years, Occu: Household,
R/o. Ambika Nagar, infront of M.S.E.B.
Power Station, Bale, Tq. And Dist. Solapur.

2-B - Shaktisagar s/o Netaji Survase,
Age: 32 Years, Occu: Labour,
R/o. Ambika Nagar, infront of M.S.E.B.
Power Station, Bale, Tq. And Dist. Solapur.

3-C - Audumbar s/o Netaji Survase,
Age: 30 Years, Occu: Service,
R/o. Ambika Nagar, infront of M.S.E.B.
Power Station, Bale, Tq. And Dist. Solapur. ..Respondents

Mr P.P. Mandlik, Advocate for Petitioner
Mr Anandsingh Bayas, Advocate for Respondents

CORAM : SANDEEP V. MARNE, J.
DATE : 2nd DECEMBER, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matters are taken up for final hearing.
2. These petitions are filed challenging the Judgment and order passed by the Industrial Court on 20.06.2017 in Complaint (ULP) Nos. 166/2013 and 9/2014. The Industrial Court has granted twin reliefs of (i) consideration of claim for promotion to the post of Foreman and (ii) payment of monetary benefits arising out of implementation of the 5th and 6th Pay Commission recommendations.
3. So far as the first relief of consideration of case for promotion to the post of Foreman is concerned, I do not see any reason why the said direction needs any interference. The only difficulty Mr Mandlik cites with regard to the first relief, is on account of retirement of the respondents. However, the Industrial Court has not decided entitlement of the respondents for grant of promotion. The direction is only to 'consider' the claim. Accordingly, direction No.4 of the impugned Judgment and order dated 20.06.2017 is upheld.
4. So far as the direction No. 5 is concerned, the Industrial Court has directed petitioners to pay monetary benefits arising out of implementation of 5th and 6th Pay Commission Recommendations.
5. There is no doubt that the respondents have been working with petitioner institution at the time when decisions were taken for implementation of

5th and 6th Pay Commission. Therefore, there is no reason for not implementing the recommendations of 5th Pay and 6th Pay Commission and to pay them monetary benefits arising out of the same..

6. The only difficulty is the date from which such arrears of salary would become payable. The Industrial Court has directed payment of monetary benefits without specifying any particular date. This would mean that the monetary benefits arising out of 5th Pay Commission pay scales would have to be paid from 01-01-1996 and those arising out of 6th Pay Commission pay scales would have to be paid from 01.01.2006.

7. Mr Mandlik, learned counsel appearing for petitioner relying on the provisions of Article 7 of the Limitation Act would contend that the Industrial Court could have awarded arrears of pay only for a period three years prior to the filing of the complaint. In support of his contentions, Mr Mandlik relies upon the Judgment of the Supreme Court in case of ***Mahadev Laxman Vaikunthe Vs. State of Mysore 1961 DGLS(SC) 175 and State of Punjab Vs. Devinder Singh 1997 DGLS (SC) 949.***

8. Per contra, Mr Bayas and Mr Ambad, learned counsel appearing for the respondents in respective petitions would submit that the cause of action for claiming the monetary benefits arising out of 5th and 6th Pay Commission recommendations are continuous in nature and that therefore, the Industrial Court has correctly awarded the monetary benefits from the dates, the same were made applicable. They would rely upon the Judgment of this Court in ***Regional Manager, Maharashtra State Road Transport Corporation, Nagpur Vs. Regional Secretary, Maharashtra State Transport Kamgar Sanghtana, Karanja LEX (Bom) 1983 12 60.***

9. After having heard the learned counsel for the parties on the limited issue of restriction of monetary benefits, I am of the view that it is a settled position in law that payment of arrears is required to be restricted to three years prior to the filing of petitions/ complaints. The reference in this regard can be made to the Judgment of the Apex Court in **Union of India Vs. Tarsem Singh** (2008) 8 SCC 648, in which it is held as under:

*5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. **In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.***

(emphasis supplied)

10. In **State of Punjab Vs. Devinder Singh** and **Mahadev Laxman Vaikunthe Vs. State of Mysore** (supra) relied upon by Mr Mandlik also the monetary benefits were restricted three years prior to the filing of petitions/complaints. Reliance of Mr Bayas and Mr Ambad on the Judgment of this Court in **Regional Manager, MSRTC, Nagpur** (supra) is of no avail. This Court has only held that the grievance of the respondents therein was of continuous in nature. There is no doubt that the grievance of the respondents in the present case are also of the continuous in nature. This is the reason why the relief of grant of monetary benefits out of 5th and 6th Pay Commission benefits,

though raised belatedly, have still been considered and granted by the Industrial Court. However, this does not mean that the arrears arising out of such benefits must be paid from 1996/2006.

11. In the result, the writ petitions partly succeed. Direction No. 4 of the impugned Judgment and order dated 20.06.2017 is upheld. Petitioner to consider the cases of the respondents for promotion to the post of Foreman within a period of two months from today and to communicate the result of such consideration to the respondents.

12. So far as the direction No. 5 of the impugned Judgment is concerned, the same is upheld except with the modification that the monetary benefits/arrears arising out of 5th and 6th Pay Commission shall be restricted three years prior to the date of filing of complaints by the respective respondents. The respondent shall be at liberty to withdraw the amount deposited by petitioner in this Court along with accrued interest and such amount be adjusted against the amount of arrears to which the respondents are entitled to.

13. Writ Petitions are accordingly partly allowed. Rule is made partly absolute in above terms. There shall be no order as to costs.

14. The civil applications are disposed of.

[SANDEEP V. MARNE, J.]

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