

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8846 OF 2021

Rajendra Narhari Kudale & Ors .. Petitioners
Versus
Pimpri Chinchwad Mahanagarpalika .. Respondent

...

Mr. Nitin A. Kulkarni for the petitioners.
Mr. G.S. Keluskar for the respondents.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 25th JANUARY, 2022

P.C:-

1 By this petition, the petitioners seek to challenge the interlocutory order dated 5/4/2021 delivered by the Industrial Court at Pune in Complaint (ULP) No.171 and 180 of 2020.

2 I have considered the strenuous submissions of the learned Advocate for the petitioners and the learned Advocate for the respondent Corporation. With their assistance, I have gone through the petition Paper book.

3 There is no dispute that within one year after completing 45 years of age, each of these complainants are duty

bound to pass a written examination so as to be entitled for increments under the Assured Progress Scheme. A resolution was passed by the General Body on 2/7/1997 bearing No.1781 resolving that persons who will be promoted to the post of Senior Clerk would be exempted from appearing in the L.S.G.D. examination, if they have crossed the age of 45 years. By a further resolution bearing No.273 dated 26/5/2011, the General Body resolved and decided to give the Assured Progress Scheme benefits at the first and second level to the Officers and employees, subject to the G.R dated 8/6/1995 and 20/7/2001.

4 Paragraph 2(b) of the G.R dated 8/6/1995 mandates that, in order to get the upper pay scale and promotion, seniority, eligibility test, qualification test and department examination, would be necessary.

5 The ULP Complaints are pending final adjudication. I am, therefore, refraining from going into the other details involved in the complaint, since it would attract certain observations. It would suffice to state that these complainants managed to convince the Corporation that they should be granted the promotional avenues and the monetary benefits, in connection thereto, by executing an undertaking, which reads as follows :-

“सदर आदेशातील मुद्दा क्रं. ७ नुसार 'लिपीक' या पदाला पदोन्नतीचे पद 'मुख्य लिपीक' असून या पदाचे अर्हतेनुसार एल.एस.जी.डी. परिक्षा उत्तीर्ण असणे अनिवार्य आहे. मी एल.एस.जी.डी. परिक्षा अद्याप उत्तीर्ण नाही. तथापि ४५ वर्षांपुढील कर्मचा-यांना एल.एस.जी.डी. परिक्षा एक वर्षाच्या आत पास होण्याच्या अटीवर लाभ देणेचा निर्णय वर नमुद केलेला आहे. सबब, आदेश क्रं. प्रशा/१४/कावि/१०५/२०१७ दिनांक २४/८/२०१७ पासून एक वर्षाचे आत मी एल.एस.जी.डी. परिक्षा उत्तीर्ण होईन याची मी हमी देत आहे.

सदर परिक्षा उत्तीर्ण न झालेस उपरोक्त आदेशान्वये मला देणेत आलेला लाभ काढून घेण्यात येईल याची मला समज मिळाली”.

6 It is thus obvious from the undertaking that these petitioners declared that they were aware that they have to pass the L.S.G.D examination for availing of the monetary benefits. They also declared that they had not passed such examination. They also declared that they were aware that they had to pass such examination within one year after crossing the age of 45. They then declared that they would pass the examination within one year from 24/8/2017, which is the decision of the Corporation, and if they fail in such examination, the Corporation would be at liberty to recover all the monetary advantages that these complainants have earned. It is undisputed that these complainants could not pass the examination within one year from 24/8/2007.

7 I find from the detailed impugned order that the Learned Industrial Court has considered all the factors threadbare at a *prima facie* stage. The view taken by the learned Industrial Court is supported by the law laid down by the Hon'ble Apex Court in the matter of State Of Punjab And Ors vs Jagjit Singh And Ors, 2017 1 SCC 148. The undertaking is in unequivocal terms and a clear declaration that the Corporation can recover the monetary dues from the complainants if they fail to pass the examination. Though the complainant nos.1 and 2 have passed the examination on 13/9/2019 and complainant nos.3 and 4 have passed the examination in July 2020, all other complainants have failed in the examination. *Prima facie*, those complainants who passed the examination was much beyond the extended period as well as the undertaking executed by them.

8 In the light of the above, I do not find that the interlocutory order passed by the Industrial Court could be branded as being perverse or erroneous.

9 This Petition, being devoid of merits, is therefore, dismissed.

RAVINDRA V. GHUGE, J