

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

WRIT PETITION NO. 1942 OF 2018

Smt. Shamsunnisa d/o Mohd. Ismail
Sheikh aged about – 50 years, Occ –
Service r/o I.B.M. Road, Katol Road,
Gittikhadan, Nagpur.

.... **PETITIONER**

// **VERSUS** //

1. Principal, Lady Amritabai Daga @ Smt.
R.P. College, Seminary Hills, Nagpur.
2. The Secretary, Women's Education
Societies, LAD & Smt. R.P. College Hostel,
Seminary Hills, Nagpur.
3. The Secretary Hostel Committee of
Women's Education Society, LAD & Smt.
R.P. College Hostel, Seminary Hills,
Nagpur.

.... **RESPONDENTS**

Shri R.N. Sen, Advocate for the petitioner.
Shri H.V. Thakur, Advocate for the respondent nos. 1 and 2.

CORAM : ROHIT B. DEO, J.
DATED : 17/02/2022.

ORAL JUDGMENT :

Heard. With Consent, the petition is heard finally.

2. The petitioner is assailing the judgment dated 13.06.2017 rendered by the learned Presiding Officer, 3rd Labour Court, Nagpur in

Application (I.D.A.) 52 of 2002 whereby the application preferred by the petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947 (the Act) is dismissed. In the context of the order which I proposed to make, it would not be necessary to narrate in detail the respective contentions. Only those facts, which are relevant, may be noticed.

3. The petitioner approached the Industrial Court in Complaint (ULPN) 1460 of 1994 alleging that the respondents herein (Management) have engaged in unfair labour practice within the meaning of Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The substratum of the complaint was that the complainant was working with the Management as a Clerk with effect from 01.08.1990. She was paid Rs.300/- per month initially, which pay was subsequently increased to Rs.600/-, and then to Rs.750/- and Rs.850/-. She claimed to be engaged in clerical and typing duties at the Hostel. The complainant claimed that she is not extended the benefits attached to permanency, and this was an unfair labour practice.

4. The Industrial Court allowed the Complaint and it would be apposite to reproduce the operative part of the judgment which reads thus :

“ORDER : Complaint is allowed.

It is declared that the respondents have engaged in unfair labour practice covered under items 6 and 9 of the Schedule IV of the Act, hence directed to cease and desist from engaging in such unfair labour practice.

Respondents are directed to regularize the services of complainant as Clerk in

the Hostel and attend the consequential benefits to her.”

5. The complainant then approached the Labour Court, Nagpur in Application (I.D.A.) 52 of 2002 under Section 33-C(2) of the Act claiming that notwithstanding the adjudication on rights by the Industrial Court, the management has neither regularized her nor has the management paid her the salary to which she is entitled. This application is rejected by the order impugned.

6. The learned Labour Court noted that while the Industrial Court extended the consequential benefits from the date of regularization, the complainant-employee has sought the financial benefits from the date of the appointment. The learned Labour Court then found fault with the employee in not bringing on the record sufficient material from which an analysis could be made qua the entitlement to the difference in the salary paid and receivable in law. It is observed in paragraph 12 of the order impugned that while the amount receivable is disclosed, the basis of the calculation is left to speculation.

7. The learned Counsel for the complainant-employee Mr. Sen would urged that a hyper technical approach is adopted. Mr. Sen would emphasize that it is beyond debate that the rights are crystallized by judicial order. The submission is that the non-disclosure of the basis of calculation could not have been a ground for outright rejection of the application

preferred by the employee. The extension of the said submission is that the salary to which the employee is entitled is statutorily fixed and regulated.

8. Mr. Harish Thakur would urge that since the employee was working in the Hostel she would not be entitled to the salary to which the clerical staff of the College are entitled. Mr. Harish Thakur points out that no salary grants is received for the Hostel.

9. Lest my observations cause any prejudice to the parties, I would refrain from making any positive observation on the submission canvassed by Mr. Harish Thakur. Suffice it to observe, whether a distinction can be drawn between the staff engaged in Hostel and the staff engaged in the College, would be a matter which shall be addressed by the Labour Court post remand.

10. Adverting to the other aspect of the matter, while the Labour Court may be right to a certain extent, in observing that the employee could have placed on the record relevant material to furnish the basis of the calculation, I cannot be oblivious of the fact that the salary payable is in public domain and is regulated by statutory rules and notification issued. Be that as it may, since I am inclined to remit the matter to the Labour Court, all these aspects can be considered after permitting the parties to place on the record further or additional material, if so advised.

11. I am satisfied that the order impugned is liable to be set aside. I

hold so since I find the approach of the Labour Court to the hyper technical.

12. The order impugned is quashed and the matter is remitted to the learned Labour Court for fresh decision after permitting the parties to place on the record relevant material, if so advised.

13. The Labour Court is requested to decide the Application (I.D.A.) 52 of 2002 as expeditiously as possible, and in any event within the next 90 days considering that the employee is litigating since years and is to superannuate within the next 12 months.

14. The petition is disposed of in the afore-stated terms.

(ROHIT B. DEO, J.)

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