IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 930 OF 2021

The Member Secretary, Maharashtra Jeevan Pradhikaran and others -- Petitioners

Vs.

Dada Tukaramji Vaidya -- Respondent

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. D.M. Kakani, Advocate for Petitioners
Mr. M.R. Rajgure, Advocate for Respondent

CORAM : MANISH PITALE, J.

DATE : 14 MARCH 2022

By this Writ Petition, the petitioners have challenged judgment and order dated 09/01/2020, passed by the Industrial Court, Nagpur, whereby a complaint filed by the respondent was partly allowed and certain directions were issued against the petitioners.

2. The grievance of the sole respondent before the Industrial Court was that the petitioners had delayed the payment of pension to him while treating him as having retired from the post of Store Keeper. It was claimed that there were certain recoveries also contemplated against the respondent for alleged

additional payments / increments given to the respondent by treating him as promoted to the post of Store Keeper.

3. The case of the petitioners was that although the respondent was promoted to the post of Store Keeper, he had not cleared the professional examination, which was mandatory. He could not have been exempted from appearing for the professional examination and that he ought not to have been promoted from the post of Assistant Store Keeper to the post of Store Keeper. It was submitted that in this backdrop, the processing of pension papers was being undertaken and this led to payment of provisional pension to the respondent.

4. The Industrial Court took into consideration the oral and documentary evidence on record and found that despite the contentions raised on behalf of the petitioners, it was clear that no recoveries could be made for alleged additional payments given to the respondent. It was also found that since the respondent was not at fault, there was no question of the pension being paid to the respondent for any post other than the post of Store Keeper, as the respondent had retired from the said post. Accordingly, the complaint was partly allowed and the petitioners were directed to fix the pension of the respondent on the last pay drawn on the post of Store Keeper and a further direction was given to release the arrears of the pension and gratuity within 60 days, failing which

the petitioners were directed to pay interest @ 8% p.a., till actual payment along with costs of Rs.10,000/-.

5. When the petition was called out for hearing, Mr. Kakani, learned counsel for the petitioners submitted that the petitioners were raising grievance only in respect of Clause 6 of the impugned order, which directs payment of interest @ 8% p.a. and costs of Rs.10,000/-. On instructions, Mr. Kakani, learned counsel for the petitioners submitted that the petitioners were not raising any grievance as regards the other clauses of the operative portion of the impugned order.

6. On the other hand, Mr. M.R. Rajgure, learned counsel for the respondent submitted that the direction to pay interest and to pay costs was justified because the respondent stood retired as far back as in the year 2010, whereupon he was paid only a paltry provisional pension and that justice was ultimately done by the Industrial Court by the impugned order and any further delay ought to invite payment of interest and costs as directed by the Industrial Court.

7. In order to examine the rival contentions of the parties, it would be appropriate to refer to the operative portion of the impugned order. The same reads as follows :

> *"1] The Complaint is partly allowed.*

2] It is declared that the Respondent No.1 to 3 have committed unfair labour practice under Items 9 & 10 of Schedule IV of MRTU & PULP Act.
3] The Complaint is dismissed against the Respondent No.4.
4] The Respondent Nos. 1 to 3 are directed to desist from committing such unfair labour practice.
5] The Respondent Nos. 1 to 3 are directed to fix the pay as lastly drawn by the Complainant for calculation of his pension without making any deduction of increments already granted to him and to start the pension within 60 days.
6] The Respondent Nos. 1 to 3 are further directed to release the arrears of pension and gratuity within 60 days. On failure to fix the pension and release of arrears as above within 60 days, the Respondent Nos. 1 to 3 shall pay interest at the rate of 8% per annum on the said amount till actual payment thereon along with cost of Rs.10,000/-."

8. As noted above, the petitioners have not raised grievance in respect of Clauses 1 to 5 of the above quoted order, but they are aggrieved by the direction given in Clause 6 of the said order. While raising grievance regarding the said clause, it is also brought to the notice of this Court that although the arrears of pension and gratuity were to be released within 60 days from the date of the order, the process of actual disbursement did take some time because of the intervening circumstances created by the Covid-19 pandemic and the consequent lock down.

9. Perusal of impugned order and the judgments that were placed before the Industrial Court would show that in similar cases, the Division Bench judgments of this Court have held that pension should be fixed by ignoring increments granted to similarly situated employees, who had not passed the professional examination and yet, they were promoted as Store Keeper.

10. In the present case, there is no dispute about the fact that the respondent has not cleared the professional examination and yet he was promoted as Store Keeper. The judgments placed before the Industrial Court, particularly judgment in the case of **Mohan R. Bobde Vs. State and Ors. (Judgment and order dated 10/06/2009, passed in Writ Petition No. 2163/2009)**, show that exemption from clearing the professional examination could not have been granted. Despite the aforesaid position, the petitioners have indeed issued gratuity payment order and commutation payment order, both dated 27/10/2020, in favour of the respondent by treating him as retired from the post of Store keeper. The calculations have been made on the basis of the last pay drawn and accordingly, the pension has been calculated and the difference in pension is also paid.

11. In these circumstances, this Court is of the opinion that the petitioners have indeed complied with the direction of the Industrial Court. Although the order of Industrial Court dated

09/01/2020, stipulated that disbursal of the arrears of pension and gratuity and compliance of other directions ought to be made within 60 days, failing which the petitioners would be liable to pay interest and costs, considering the fact that peculiar circumstances was created by Covid-19 pandemic, this Court is of the opinion that it would be burdensome for the Petitioners to pay interest and costs, despite the fact that they had indeed complied with the order passed by the Industrial Court. The delay is sufficiently explained on behalf of the petitioners in view of the peculiar facts and circumstances. This Court is also conscious of the fact that the position of law that can be interpreted from the judgments placed before the Industrial Court on behalf of the petitioners may have the effect of grant of reduced pension to the respondent. Yet, the petitioners have proceeded to grant relief to the respondent by treating him as having retired from the post of Store Keeper and the pension payable to the respondent along with the arrears has been calculated on the basis of last pay drawn by the respondent on the post of Store Keeper.

12. Considering all these circumstances, this Court is of the opinion that Clause 6 of the impugned order deserves to be set aside, particularly in the backdrop that on 27/10/2020, the petitioners have admittedly granted relief to the respondent in terms of Clauses 1 to 5 of the impugned order. It is held that the petitioners will not be liable to pay interest @ 8% p.a. and costs of

Rs.10,000/-, as directed in Clause 6 of the order. Needless to say, Clauses 1 to 5 of the impugned order are upheld.

13. The Writ Petition stands disposed of.

JUDGE