

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

WRIT PETITION NO. 4067 OF 2019

Mrs. Pushpa Bhimrao Naik : **PETITIONER**
Age 60 yrs. Occ. Service,
R/o 160 Tenament, Civil Lines, Nagpur

VERSUS

- 1 Government Milk Scheme, :
Through its regional Dairy Development
Officer, Civil Lines, Nagpur **RESPONDENTS**
- 2 General Manager, Government Milk
Scheme, Telankhedi, Civil Lines, Nagpur

Mr. Salim I. Khan, Advocate for petitioner
Mr. N.R. Patil, AGP for respondents

CORAM : MANISH PITALE, J.

DATE : 14th SEPTEMBER 2022

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

2. By this petition, the petitioner has challenged judgment and order dated 12/03/2019, passed by the Industrial Court, Maharashtra (Nagpur Bench), Nagpur, whereby a Complaint filed by the petitioner under Section 28 of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as “M.R.T.U. & P.U.L.P. Act”), read with Items 6 and 9 of Schedule IV thereof was dismissed.

3. This Court issued notice in the present writ petition on 17/06/2019 and both the respondents were represented by the learned Assistant Government Pleader. On 11/10/2021, the learned counsel appearing for the petitioner specifically relied upon **judgment and order dated 25/09/2019, passed by the Hon’ble Supreme Court in Civil Appeal Nos. 10064-10075/2010 (Pandurang Sitaram Jadhav Etc. Vs. The State of Maharashtra through its Dairy Manager & Anr)**. The learned Assistant Government Pleader took time to go through the said judgment and subsequently the present writ petition was posted for final disposal.

4. The claim of the petitioner before the Industrial Court in the Complaint in brief was that the respondents had indulged in unfair labour practice, inasmuch as the petitioner was deprived of regularization of her service despite having completed 240 days of continuous service between September, 1982 to May, 1983. The Complaint was filed along with an application for condonation of delay in the year 2011. Initially, the Industrial Court dismissed the

application for condonation of delay, due to which the petitioner was constrained to approach this Court by filing Writ Petition No.2389/2017. By judgment and order dated 06/09/2018, the Writ Petition was allowed. Consequently, the application for condonation of delay was allowed and the matter was remitted to the Industrial Court for deciding the Complaint on merits. Consequently, the Complaint, although filed in the year 2011, was registered in the year 2018, as Complaint (ULP) No. 203 of 2018.

5. The Industrial Court by the impugned judgment and order dated 12/03/2019, dismissed the Complaint, primarily on the ground that after completion of 240 days in service, the petitioner had ceased to be in service with the respondents. It was held that no case was made out for holding that the respondent had indulged in unfair labour practice and accordingly, the Complaint was dismissed.

6. Mr. Salim Khan, learned counsel appearing for the petitioner submitted that although the petitioner raised grievance before the Industrial Court in the year 2011 and she superannuated on 30/06/2014, that in itself could not be a ground for not considering the relief claimed by the petitioner. It was submitted that since this Court by allowing Writ Petition No.2389/2017, by judgment and order dated

06/09/2018, had condoned the delay in filing Complaint before the Industrial Court, the Complaint ought to have been decided on its own merits, by taking into consideration the facts that emerged from the material available on record. By referring to the material available on record, it was emphasized that the petitioner had completed 240 days of continuous service and, therefore, the respondents had clearly committed an unfair labour practice by failing to give benefit of regularization to the petitioner in the year 1983 itself. It was further submitted that even though the petitioner was subsequently appointed in the year 1988, on compassionate ground, upon the death of her husband, that in itself could not be a factor to not consider the grievance raised on behalf of the petitioner.

7. The learned counsel appearing for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Pandurang Sitaram Jadhav Etc. Vs. The State of Maharashtra** (supra). It was emphasized that in the said case also, concerning the same industry in Konkan region of the State, although grievances were raised by the appellants therein by filing Complaints in the years 2001 and 2002, while they had completed 240 days of continuous service in the years 1984, 1986, 1987 and 1988, the Hon'ble Supreme Court granted relief to the appellants therein. It was specifically directed that the appellants

would be regularized in service and the earlier period of service would be counted for the purposes of calculation of benefits without being monetarily entitled, but, the entitlement would be from the dates of filing of the Complaints. The learned counsel appearing for the petitioner submitted that similar relief could be granted to the petitioner, as a consequence of which she would have the relief of enhanced pension, apart from the monetary relief towards enhanced salary from the year 2011 to 2014 and enhanced pension from 01/07/2014 onwards.

8. Mr. N.R. Patil, learned Assistant Government Pleader appearing on behalf of the respondents / State fairly submitted that a reference to the statements made in the reply on behalf of the said respondent itself demonstrated that the petitioner had indeed completed 240 days of service between September, 1982 to May, 1983. But, it was emphasized that the fact about the petitioner having been appointed on compassionate basis in a regular manner from the year 1988, was neither brought to the notice of the Industrial Court in the manner expected nor was it emphasized before this Court in Writ Petition No. 2389/2017, filed by the petitioner when the delay in filing of the Complaint was condoned. It was submitted that if this fact was brought to notice in the earlier round of litigation, perhaps the tenor of

arguments on behalf of the respondents would have been different. But, it was submitted that this Court, even at this stage, may consider the aforesaid fact about the petitioner having enjoyed regular appointment and service from 1988, till she superannuated on 30/06/2014, while disposing of the present writ petition.

9. This Court has heard the learned counsel for the rival parties in the backdrop of the material placed on record, particularly the judgment of the Hon'ble Supreme Court in the case of **Pandurang Sitaram Jadhav Etc. Vs. The State of Maharashtra** (supra). In view of the material available on record, there is no serious dispute about the fact that the petitioner had indeed completed 240 days of continuous service between September, 1982 to May, 1983 and that, therefore, she was entitled for regularization. Having been deprived of the said relief, the respondents did indulge in unfair labour practice under the provisions of the said Act, read with the Schedule appended thereto. To that extent, the Industrial Court was not justified in rendering a finding in favour of the respondents. Therefore, the entitlement of the petitioner was indeed established.

10. As regards, the fact of the petitioner having been appointed on compassionate basis from 1988, this Court is of the opinion that merely

because the petitioner came to be appointed on compassionate basis from the year 1988, ought not to come in her way towards consideration of the relief claimed in the Complaint filed before the Industrial Court. Insofar as delay in filing the Complaint is concerned, this Court already condoned the delay by judgment and order dated 06/09/2018, passed in Writ Petition No.2389/2017. As to what impact filing of the Complaint in the year 2011, as regards relief relatable to the period 1983 to 1988, is concerned, this Court is inclined to follow the *dictum* laid down by the Hon'ble Supreme Court in the aforesaid judgment in the case of **Pandurang Sitaram Jadhav Etc. Vs. The State of Maharashtra** (supra).

11. Applying the said position and the nature of relief granted by the Hon'ble Supreme Court in the said judgment, this Court is of the opinion that the writ petition deserves to be allowed to the limited extent as indicated by the Hon'ble Supreme Court in the said judgment.

12. Having concluded that the petitioner had indeed completed more than 240 days of continuous service between September, 1982 to May, 1983, the petitioner to that extent can be said to be similarly situated as the appellants in the case of **Pandurang Sitaram Jadhav Etc. Vs. The State of Maharashtra** (supra). The petitioner having been

appointed on compassionate basis in the year 1988, ought not to militate against her interest and the limited relief that she would be entitled to, in the facts and circumstances of the present case.

13. It is significant that after taking note of the facts pertaining to individual appellants in the case of **Pandurang Sitaram Jadhav Etc. Vs. The State of Maharashtra** (supra), the Hon'ble Supreme Court thought it fit to refer to the powers available to the Industrial Court under the provisions of the said Act and the law elucidated by the Hon'ble Supreme Court in the judgment in the case of **Maharashtra State Transport Corporation and another Vs. Casteribe Rajya Parivahan Karmchari Sanghatana** reported in (2009) 8 SCC 556 and thereupon the Hon'ble Supreme Court held as follows :

“12. In view of the aforesaid facts as also the legal pronouncements made subsequently, we have no doubt that these appellants before us would be entitled to the benefit of regularization and mere delay in preferring the claim would not come in their way except that the benefit of regularization would arise from the date the complaints were filed.

13. The findings of an unfair labour practice by the Tribunal has in fact been confirmed by the learned Single Judge in the present case and the only two reasons for interference by the Division Bench relating to *Umadevi's* case (supra) have already been explained in the aforesaid subsequent judgments.

14. We thus, direct the respondents to regularize the appellants accordingly and the necessary orders be issued

within three months from the date of the order.

15. The benefits which the appellants would be entitled should also be remitted to the appellants within the same period from the date of the complaints, through the earlier period would be counted for the purpose of calculation of benefits without the appellants being monetarily entitled for that period.”

14. In view of the above, the writ petition is partly allowed.

15. The impugned judgment and order passed by the Industrial Court is quashed and set aside. The Complaint filed by the petitioner is partly allowed and it is directed that the service of the petitioner shall stand regularized from the date she completed 240 days of continuous service in the year 1983. The petitioner would be entitled for actual relief in view thereof from the date of filing of her Complaint, which was in March 2011, though the earlier period would be counted for the purpose of calculation of benefit, without the petitioner being monetarily entitled for such period. Accordingly, upon calculation of benefits, the petitioner would be entitled to enhanced salary from 01/04/2011 to 30/06/2014, when she superannuated from service. The petitioner would also be entitled to proportionate enhanced pension amount from 01/07/2014, till date. The arrears pertaining to enhanced salary for the period from 01/04/2011 to 30/06/2014 and the enhanced pension from 01/07/2014 to September, 2022, shall be disbursed

within a period of three months from today.

17. In view of the relief granted to the petitioner, she shall be paid pension at the enhanced rate from October, 2022.

18. The Writ Petition is allowed in above terms. No costs.

Rule is made absolute in above terms.

JUDGE

MP Deshpande