

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

WRIT PETITION NO. 6213 OF 2019

Babasaheb Abhiyantriki Mahavidyalaya and anr__ Vs. __ Raju Madhukarrao Jaulkar
and anr

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

Court's or Judge's orders

Mr. Rohit Joshi, Advocate for petitioners
Mr. V.N.Patre, Advocate for respondent No. 1

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/11/2022

1] Heard Mr. Joshi, learned counsel for the petitioner and Mr. Patre, learned counsel for respondent No.1.

2] The petition challenges the judgment dated 15.6.2019 (pg 142) passed by the learned Industrial Court in a Complaint under Section 28 of the MRTU and PULP Act, claiming discrimination in the matter of granting pay-scale to the petitioner inasmuch as the petitioner claims that by virtue of the GR dated 22.11.2011 (pg 40) he was entitled to the pay-scale of gardener as per Annexure-B thereto, which prescribes the pay-scale for a gardener as ₹.5200-20200 & grade pay ₹.1800 of category-D, as against which he was granted a pay-scale of ₹.4440-7440 & Grade Pay ₹.1800 as per the G.R. dated 7.10.2009 (pg 184), Entry No 363 (pg. 250).

The learned Industrial Court has held that the petitioner is entitled to the pay as per the G.R. dated 22.11.2011 and not as per the G.R. dated 7.10.2009.

3] Mr. Joshi, learned counsel for the petitioner taking exception to the judgment of the learned Industrial Court submits that the G.R. dated 22.11.2011 is applicable to the employees of the University and not to the employees of the colleges affiliated to the University, to whom the G.R. dated 7.10.2009 is applicable and the pay-scale as per G.R. dated 7.10.2009 has already been paid to the respondent no.1. He further submits that the earlier attempts of the petitioner to seek pay-scale equivalent to the employees of the University have been rejected by the Grievance Committee of the University earlier in point of time in respect of 4th Pay Commission and so far as the claim for 5th Pay Commission is concerned, it is rejected by the learned Industrial Court in Complaint ULP No. 9/2003, dismissed on 25.8.2008, and though the learned Industrial Court has held that the decisions therein operate as *res judicata*, instead of following the same, the learned Industrial Court has undertaken an exercise to determine the pay-scale which is not permissible. He therefore submits that the impugned judgment of the learned Industrial Court is liable to be quashed and set aside.

4] Mr. Patre, learned counsel for respondent no.1 supports the impugned judgment and submits that

the G.R. dated 22.11.2011 is applicable to the petitioner and he is therefore entitled to the pay-scale for a gardener as indicated in Entry 44 in Category-D Annexure B (pg.45). He submits that since the Respondent No.2 was granted such a pay-scale, the Respondent No.1 cannot be discriminated in the matter.

5] It is not in dispute that the Respondent No.1, a gardener is not an employee of the University but an employee of the petitioner No.1 which is an institution affiliated to the Amravati University, which is governed by the G.R. dated 22.11.2011 (pg. 40). That being the position, the Respondent No.1 would clearly be governed by the G.R. dated 7.10.2009 (pg. 184). That apart, even the G.R. dated 22.11.2011 in Clause 6 indicates that employees in Annexure-B Category-D would be governed by the G.R. dated 7.10.2009, in which the respondent no.1 falls.

6] The plea in this regard in respect of the fixation of pay-scale as per 4th and 5th Pay Commission having been negatived by the Grievance Committee of the Univeristy and the Industrial Court earlier in point of time which has been noted by the learned Industrial Court and therefore, having held that the plea in this regard was barred by *res judicata*, it was not permissible for the learned Industrial Court to have embarked upon an exercise contrary to what had been already held

earlier in respect of the claim regarding fixation of the pay of the pay-scale as per 4th and 5th Pay Commission.

7] In view of the above reasons, the impugned judgment therefore cannot be sustained and is hereby quashed and set aside and the complaint under Section 28 of the MRTU and PULP Act by Respondent No.1 is dismissed. No costs.

JUDGE

Rvjalit