

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

Writ Petition No. 1730 of 2020

[The Executive Engineer, Zilla Parishad (Works) Division, Wardha ..vs.. Shri Digambar Ramaji Singanjude]

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

Court's or Judge's orders

Mr. Jayant Mokadam, Advocate for the petitioner

CORAM : ROHIT B. DEO, J.

DATED : 8-2-2022

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The petitioner is impleaded in Complaint (ULP) 53 of 2012 as party respondent and is referred to in the cause title as "The Executive Engineer, Zilla Parishad (Works) Division, Wardha". The complainant, who is the respondent herein, sought a declaration that the respondent in the complaint has engaged in unfair labour practice and that a direction be issued to the respondent to pay the complainant salary of Oilman from 1-4-1991 with interest at the rate of 18%. In brief, the case of the complainant is that he was brought on regular temporary establishment as per the Kalelkar Award with effect from 1-4-1991 as Oilman. The complainant annexed copy of the order dated 7-3-2002

from which it is discernible that the complainant's salary is shown as 775-12-955-15-1030-20-1150 from 1-4-1991. According to the complainant, he was, however, paid salary of which the starting pay was Rs. 750/-.

3. The petitioner appeared in response to notice issued by the Industrial Court and filed written statement. The petitioner did not dispute that initially pay scale with starting scale of Rs. 775/- was granted vide order dated 7-3-2002. However, the petitioner referred to communication of the Government dated 11-1-1999 and submitted that revised pay scale is made applicable to Class III and Class IV employees of Zilla Parishad and as per the said Government Resolution, the correct pay scale to which the complainant is entitled to is Rs. 750-940 (according to the 4th Pay Commission) and Rs. 2250-3200 (according to the 5th Pay Commission). It is submitted that it was in view of the Government Resolution that instead of Rs. 775-1150, the complainant was granted pay scale of Rs. 750-940. The petitioner, however, did not dispute that the Zilla Parishad issued corrigendum dated 26-12-2003 again revising the

starting pay scale to Rs. 775/-. Perusal of the written statement reveals that it was submitted that no unfair labour practice is committed since the pay scale is already revised vide corrigendum dated 26-12-2003. Pertinently, it is not even pleaded that the Chief Executive Officer or the State Government are necessary parties to the complaint. All that is pleaded is that the complainant, if aggrieved, ought to have challenged the order of the Chief Executive Officer and the Government Resolution and the complaint is pre-mature.

4. The parties adduced the evidence and on behalf of the employer, the Deputy Engineer, Works Department, Zilla Parishad, Wardha, Mr. Arun Wadte stepped into the witness box. Broadly, the examination-in-chief is a reproduction of the written statement. During the course of the cross-examination, the witness admitted that the pay scale with starting scale of Rs. 750/- was duly corrected by the Zilla Parishad as per order dated 26-12-2003. The witness deposed that the zilla parishad has sought the advice from the Government which is not received till date. Notably, the cross-examination is conducted on 30-8-2018.

5. The learned Judge of the Industrial Court considered the issue thus :

6] *Undisputedly the complainant is working with the respondent as oilman, brought on Regular Temporary Establishment as oilman w.e.f. 1/04/1991 and the appointment of the complainant is confirmed by order dated 7/03/2002 (the copy of order is at Exh. 3/A). It is not disputed that, in that order dated 7/03/2002, the pay scale of the complainant as "oilman" is shown as Rs. 775-12-955-15-1030-20-1150 since 1/04/1991. It has come on record and not much disputed that, on 11/01/1999 the State Government issued Government Resolution in respect of revised pay scale for Class III and Class IV employees working in Zilla Parishad and the same G.R. has been issued in pursuance of Sukhtankar committee and it has been made it clear in the G.R. that, pay scale mentioned therein are made applicable to Class III and Class IV employees of the Zilla Parishad w.e.f. 1/01/1996 and for that, the employee was required to give option within three months (the copy of G.R. is at Exh. 24/A).*

7] *On careful perusal of the copy of G.R. dated 11/01/1999 (Exh.24/A) it reveals that, in that G.R. the pay scale of oilman is shown as 750-940 and 2550-3200. Furthermore as per G.R. dated 11/01/1999 for the purpose of revised pay scales it was obligatory on the part of the employer/Zilla Parishad to obtain options from the employee i.e. complainant in respect of revised pay scales, however, it is not the defence of the respondent that, the complainant had submitted options accepting the pay scales within three months as per G.R. dated 11/01/1999.*

8] Moreover, it further reveals that, in pursuance of Government Resolution dated 11/01/1999, the respondent issued corrigendum on 26-12-2003 and thereby changed the pay scale of oilman from Rs. 775-1150 to 750-940 and Rs. 2610-4000 to 2550-3200 and made applicable those pay scales to the complainant till the guidance received from the State Government. The witness of the respondent fairly admitted during cross-examination that, advise sought from the State Government on the corrigendum about pay scales is not received till today. It goes to show that, the respondent issued corrigendum though there was no such direction in the G.R. dated 11/01/1999 nor the respondent has authority to issue such corrigendum on G.R. dated 11/01/1999. Not only this but, even otherwise also no steps were taken by the respondent from seeking advise on the corrigendum from State Government since last more than 15 years and such inaction on the part of the respondent is not only improper but in violation of Government Resolution as well as order dated 7/03/2002 which is a part of service condition, therefore it can be safely said that the respondent has engaged in an unfair labour practice under Item 9 of Schedule IV of the ULP Act.

9] Similarly in the corrigendum the pay scale of oilman as well as conductor has been revised and the witness of the respondent also stated during the cross-examination that, as per order dated 7/03/2002 the pay scale of the conductor is same with the pay scale of oilman. Accordingly as per order dated 7/03/2002 the pay scales are given to all the conductors but not given the pay scale in three oilman's though there is a mentioned of conductor as well as oilman in the corrigendum. It means though as per the corrigendum the pay scale of the conductor as well

as oilman has been changed but the conductors are given pay scale as per order dated 7/03/2002 but the same is not given to the oilman. There is no explanation much less sufficient explanation put forth on behalf of the respondent for not reducing the pay scales of the conductor as per corrigendum like oilman i.e. complainant as such the act of the respondent certainly seems to be discriminatory in respect of the complainant and favoured the conductor amounts to unfair labour practice under Item 5 of Schedule IV of the ULP Act.

From the above discussion it is clear that, as per order dated 7/03/2002 the complainant was entitled for the pay scale of Rs. 775-1150 and though he has not opted for the revised pay scale as per G.R. dated 11/01/1999, the pay scale of the oilman i.e. complainant has been revised by way of corrigendum and reduced the pay scale to 750-940, though there was no direction in the G.R. to issue such corrigendum and even otherwise also though the pay scale of the conductor was also revised along with oilman in the corrigendum still the conductors were paid wages in the pay scale of Rs. 775-1150 and the pay scale of oilman has been changed to Rs. 750-940/-. This act of the respondent is certainly in violation of the G.R. which amounts to breach of service condition of the complainant and discriminatory also, therefore, it can be safely said that, the respondent has engaged in an unfair labour practice under Item 5 and 9 of Schedule IV of the ULP Act hence I answer this issue in the affirmative.”

6. I have given due consideration to the reasons recorded by the learned Industrial Court and I

see no error, much less, an error warranting interference in writ jurisdiction.

7. It is faintly argued that the Chief Executive Officer was a necessary party. The submission is noted only for rejection. The technical head of the Department was impleaded and nothing prevented the zilla parishad or the officer impleaded from seeking a direction from the Court that the Chief Executive Officer shall be impleaded as party respondent. Indeed, nothing prevented the Chief Executive Officer from voluntarily appearing and seeking impleadment. I have already noted that there is no specific objection that the complaint suffers from the vice of non-joinder or mis-joinder of parties. In such matters, a hyper technical view would be destructive of the object of the labour legislation.

8. Insofar as the evidence on record is concerned, there is absolutely no material to show that the complainant is not entitled to the pay scale which the zilla parishad has admittedly granted to him by issuing the conrrigendum noted supra. Even if it is assumed that the pay scale was granted in 2003 as an ad-hoc measure

and was subject to the advice received, concededly, for 15 years, no advice was received since the cross-examination of the witness is conducted in 2018 and the witness admits that there is no advice received from the Government.

9. In this view of the matter, I need not delve deeper although I broadly agree with the other reasons recorded by the Industrial Court. I am satisfied that there is no case made out for interference in writ jurisdiction.

10. The petition is dismissed.

JUDGE

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