

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

**WRIT PETITION NO. 7583 OF 2019**

The Divisional Controller, Bhandara and anr.

Vs.

Kuwarlal s/o Sukhram Shende

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

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Mr. P.S. Gavai, Advocate for petitioners.  
Mr. S.A. Nerkar, Advocate for respondent.

**CORAM : MANISH PITALE J.**

**DATE : 28.03.2022.**

By this writ petition, the petitioners have challenged judgment and order dated 22.10.2018, passed by the Labour Court, Gondia, whereby an application under Section 33-C(2) of the Industrial Disputes Act, 1947, filed by the respondent has been allowed and the petitioner – Corporation has been directed to pay an amount of ₹80,000/- to the respondent.

2. The respondent filed the aforesaid application against the petitioner – Corporation for recovery of the said amount, stating that he was wrongly granted benefit of time scale of pay with effect from 01.03.1989 instead of 18.12.1986. The

respondent placed on record oral and documentary evidence to support his case for quantification of the amount payable to him at ₹80,000/-.

3. It is an admitted position that the petitioner failed to file even a written statement in the said application. There was no question of the petitioner – Corporation having led any evidence in that backdrop.

4. Considering the material on record, the Labour Court found that the respondent had proved his claim of recovery of ₹80,000/- from the petitioner – Corporation towards time scale of pay that ought to have been paid to him from 18.12.1986. Accordingly, the application filed by the respondent was allowed.

5. In the present writ petition, while issuing notice on 18.11.2019, this Court granted stay of execution of the impugned order subject to the petitioner – Corporation depositing ₹40,000/- in this Court. The said amount was deposited.

6. Mr. Gawai, learned counsel appearing for the petitioner–Corporation submitted that the application under Section 33-C(2) of the aforesaid

Act, was not maintainable for the reason that adjudication of the entitlement of the respondent towards the said amount was yet to take place. The aforesaid contention was raised in the backdrop of earlier rounds of litigation wherein the respondent and other similarly situated workmen had approached the Industrial Court for grant of relief.

7. Learned counsel emphasized upon the judgment and order dated 04.05.2007, passed by this Court in a bunch of writ petitions wherein order of the Industrial Court was modified and it was directed that the petitioner – Corporation shall provide benefits to workmen like the respondent herein, provided they satisfy the eligibility criteria and all conditions prescribed in Resolution No.8856 read with Clause 19 of the Settlement of 1985.

8. Reliance was also placed by the learned counsel on the judgment of the Hon'ble Supreme Court in the case of ***Maharashtra SRTC Vs. Premal, 2007 (9) SCC 141***, to contend that the claim of the respondent first required adjudication as regards satisfaction of the aforesaid conditions and only thereupon, could the respondent invoke Section 33-C(2) of the aforesaid Act. On this basis, it was

submitted that the impugned order deserved to be set aside and the writ petition deserves to be allowed.

9. On the other hand, Mr. Nerkar, learned counsel appearing for the respondent at the outset invited attention of this Court to order dated 04.07.2016 passed by this Court in Writ Petition Nos.949/2015, 1012/2015 and 1634/2015, wherein this Court in the case of similarly situated workmen had dismissed the writ petitions of the petitioner – Corporation and confirmed identical orders passed by the Labour Court in applications filed under Section 33-C(2) of the aforesaid Act by the said workmen.

10. It was submitted that the orders passed in favour of the identical situated workmen were already implemented by the petitioner – Corporation and therefore, it could not lie in the mouth of the petitioner – Corporation to challenge the impugned order in the present case.

11. It was further submitted that there was no question of any further adjudication of the claim of the respondent, in the facts and circumstances of the present case, because it was not even the case of the petitioner – Corporation either before the Labour Court or before this Court in the writ petition that the

respondent did not satisfy the conditions, particularly the condition of selection at least once by a Competent Selection Committee. On this basis, it was submitted that the Labour Court was justified in entertaining the application filed by the respondent under Section 33-C(2) of the aforesaid Act and that since the petitioner – Corporation failed to even file a written statement before the Labour Court, the relief granted to the respondent on the basis of his pleadings and the evidence placed on record, did not deserve any inference.

12. Heard the learned counsel for the rival parties and perused the material on record.

13. In the present case, there is no dispute about the fact that in terms of the aforesaid judgment of the Hon'ble Supreme Court in the case of *Maharashtra (supra)* and the observations made by this Court in judgment and order dated 04.05.2007, passed in Writ Petition No.888/2004, ***Maharashtra State Road Transport Corporation vs. Dwarka Das s/o Nanumal Bharuka and another and connected petitions***, the benefit of time scale of pay would be available to the respondent upon satisfying the conditions taken note of in the judgments of the Supreme Court and this Court.

14. In the present case, the respondent filed application under Section 33-C(2) of the said Act, on the basis that he was eligible for grant of relief of time scale of pay from 18.12.1986, instead of 01.03.1989. It is an admitted position on record that the petitioner – Corporation failed to file written statement in the said application. The respondent proceeded to adduce oral and documentary evidence before the Labour Court in support of his claim and in terms thereof, the Labour Court found that the respondent was entitled to a sum of ₹80,000/- towards the relief claimed in the said application. The assertions made on behalf of the respondent went uncontroverted before the Labour Court, for which the petitioner – Corporation is itself to blame.

15. It is significant that even in the writ petition filed before this Court, the petitioner – Corporation has not put-forth specific contentions with regard to the conditions to be satisfied by the respondent – workman. There is no statement regarding his selection at least once by Competent Selection Committee and therefore, it cannot lie in the mouth of the petitioner – Corporation to contend that the application under Section 33-C(2) of the aforesaid Act was not maintainable.

16. It is undisputed that in the case of identically situated workmen, the petitioner has implemented orders passed on the applications filed under Section 33-C(2) by the workmen. The order dated 04.07.2016, passed by this Court in Writ Petition No.949/2015 and connected petitions shows that relief granted by Labour Court to identically situated workmen has been confirmed by this Court by dismissing the writ petitions. In this situation, while exercising writ jurisdiction, this Court is not inclined to consider the contentions raised on behalf of the petitioner – Corporation. The amount payable to the respondent – workmen in the present case as per the order of the Labour Court is only ₹80,000/-.

17. Hence, in these circumstances, this Court finds that no ground is made out for invoking writ jurisdiction in favour of the petitioner – Corporation. Accordingly, the writ petition is dismissed. The amount of ₹40,000/- deposited by the petitioner – Corporation in this Court shall be disbursed forthwith to the respondent along with accrued interest, if any.

18. The petitioner – Corporation shall pay the balance amount in terms of the impugned order to the respondent within a period of eight weeks from today.

19. It is made clear that the present writ petition has been disposed of in the aforesaid manner in the peculiar facts and circumstances of the present case.

**JUDGE**

*Prity*

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GABHANE

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