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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.846 OF 2006

Dharangaon Nagar Palika

PETITIONER

VERSUS

Gopinath Tukaram Mali (Died) LRsand Others

RESPONDENTS

.....

Mr. Jitendra V. Patil, Advocate for the petitioner

Mr. Tapan K. Sant, Advocate for respondents NO.1 to 19

.....

WITH

WRIT PETITION NO.84 OF 2007

Yograj @ Yuvraj Jagannath Marathe and Others

PETITIONER

VERSUS

Dharangaon Nagar Palika

RESPONDENT

.....

Mr. Tapan K. Sant, Advocate for the petitioners

Mr. Jitendra V. Patil, Advocate for respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th JULY, 2023

ORDER :

1. Challenge in Writ Petition No. 846 of 2006 is to the judgment and order dated 14th December, 2006 passed by learned Member, Industrial Court, Jalgaon in Miscellaneous Application (ULP) No. 20 of 2003, thereby granting liberty to the

complainants to withdraw an amount of Rs.33,21,507/-which was recovered pursuant to Recovery Certificate dated 6th November, 2003.

2. Writ Petition No. 84 of 2007 is filed by some of the employees challenging judgment and order dated 31st August, 2008 passed by the learned Member, Industrial Court, Jalgaon in Miscellaneous (ULP) No. 31 of 2003 thereby rejecting the application filed by the complainants for issuance of recovery certificate under section 50 of the MRTU and PULP Act, 1971.

3. Hereinafter, the litigating parties shall be referred as Municipal Council and employees.

4. Admitted facts can be stated thus -

Municipal Council passed resolution No.85 to extend benefits of 5th Pay Commission recommendation to its employees from the date the Collector takes decision and also resolved that the difference in pay from 1st January, 1996, should not be paid to the employees.

5. The Collector, vide letter dated 18th February, 2002, directed the Municipal Council to grant salary and increments as per 5th Pay Commission to its employees and it was to be made applicable from 1st January, 1996.

6. The Employees preferred Complaints (ULP) No.516 of 1999, 522 of 1999, 743 to 746 of 1999, 858 to 870 of 1999, 872 of 1999, 2265 to 2271 of 1999 and 2273 to 2275 of 1999 before Industrial Court, Jalgaon claiming permanacy and other benefits of the permanent employees.

7. The Industrial Court, by order dated 2nd July, 2002 allowed the complaints in following terms -

“i. Complaints (ULP) No. 516/99, 522/99, 743 to 746/99, 858 to 870/99, 2265 to 2271/99 and 2273 to 2275/99 are hereby allowed.

ii. It is hereby declared that the respondent has committed unfair labour practices under itsm 6 & 9 of Sch. IV of MRTU & PULP Act, 1971, and directed to desist from continuing the same.

iii. The respondent is further directed to pay the salary and benefits of permanent employees to the complainants concerned on the post they are working w.e.f. the date of filing of the respective complaints till they were absorbed in regular employment.

iv. The respondent is given three months time to make the payment of arrears in terms of the order, after deducting the payment already made.

v. In the circumstances parties to bear their own costs.”

8. Admittedly, this order is confirmed up to the Supreme Court. The employees thereafter obtained a certificate under section 50 of the MRTU and PULP Act for recovery of the arrears. Recovery certificate was issued on 6th November, 2003 in

Miscellaneous Application (ULP) No. 20 of 2003. The employees preferred Writ Petition No. 6252 of 2005 seeking direction to the Collector, Jalgaon to recover the amount as per the recovery certificate. By order dated 22nd March, 2005, learned Division Bench of this Court directed the Collector to effect recovery in pursuance of the recovery certificate within 3 months. Pursuant to the directions of the Division Bench, the Collector recovered the entire amount and deposited it in this Court.

9. Thereafter, the Municipal Council filed Writ Petition No. 3812 of 2005 challenging the recovery certificate. By order dated 1st September, 2005, the learned Division Bench remanded the matter back to the Industrial Court for determining the amount payable to the employees in accordance with law. The said order was unsuccessfully challenged in review petition.

10. The Municipal Council, thereafter, appeared before the Industrial Court and opposed the recovery certificate and gave a chart showing details of calculation of each employee. After recording the evidence, the Industrial Court allowed Miscellaneous Application (ULP) No. 20 of 2003 and granted liberty to the employees to withdraw the amount deposited in this Court. The Municipal Council has challenged said order by filing Writ Petition No. 846 of 2006.

11. Heard learned advocates for the parties. Perused the memos of the writ petitions, documents annexed with it and the impugned orders.

12. The ground pressed into service by the learned advocate for the Municipal Council, while challenging the decision of the Industrial Court is that, the employees are not entitled for arrears of 5th pay commission with effect from 1st January, 1996 and they are only entitled for the said amount from 2002 onwards, when they were made permanent. There is no merit in the said submission in the light of the fact that admittedly, the employees were granted permanency benefits by order dated 12th July, 2002 passed by the Industrial Court, Jalgaon. Admittedly, the employees have joined services in the year 1992-1993 onwards as temporary employees and were in continuous service since then.

13. The Industrial Court, after recording of evidence, has recorded a finding of fact that the Municipal Council is relying on its resolution dated 18th February, 2002, wherein it is held that the workers are not eligible and entitled to get arrears of 5th Pay Commission from 1st January, 1996 up to 18th February, 2002.

14. It is to be noted here that all the similarly situated

employees of the Municipal Council are already given benefit of 5th Pay Commissioner with effect from 1st January, 1996. In that view of the matter, the approach on the part of the Municipal Council of denying said benefits to the respondents-employees is discriminatory and cannot be countenanced. The Industrial Court has rightly allowed the Miscellaneous Application (ULP) No. 20 of 2003 and by relying on "***Dhirendra Chamoli and Others V/s State of U.P.***" 1986 1 SCC 637 the calculation of Rs.33,21,507 is rightly arrived at. The calculations in the present matter were submitted by the employees, which the Industrial Court has accepted and held to be correct. The Municipal Council could not bring before the Industrial Court anything to substantiate its contention that the calculations are not correct and that the employees are not entitled for 5th Pay Commission benefit w.e.f. 1st January, 1996.

15. The Industrial Court has passed a well reasoned judgment on the basis of the evidence and documents placed before it. There is no illegality or perversity in the judgment of the Industrial Court granting liberty to the employees to withdraw the amount deposited by the Municipal Council. The Industrial Court has not committed any jurisdictional error or error of law. No case is made out by the Municipal Council to warrant interference in the impugned judgment, in exercise of

extraordinary writ jurisdiction. There is no merit in Writ petition No.846 of 2006 filed by the Municipal Council. Hence, the following order :

ORDER

- A. Writ petition No. 846 of 2006 is dismissed.
- B. Writ petition No. 84 of 2007 is allowed. The petitioners shall be paid the same benefits like that of other employees / respondents in Writ Petition No. 846 of 2006.
- C. In view of the fact that amount of Rs.33,21,507/- was deposited in this Court and out of that 50% amount was withdrawn by the employees and 50% was remitted back to the Municipal Council, the Municipal Council shall deposit the amount withdrawn by it, along with 7 % simple interest p.a. from the date of withdrawal till the date of deposit of the amount, in this Court, within a period of eight weeks from the date of uploading of this order.
- D. The employees are at liberty to withdraw the amount deposited by the Municipal Council, by filing Civil Applications.
- E. In view of disposal of the writ petitions, all the pending civil applications stand disposed of.

**[NITIN B. SURYAWANSHI]
JUDGE**