

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7157 OF 2016

Thane Municipal Corporation & Ors.

..Petitioners

Vs.

Mahanagarpalika Magasvargiya
Karmachari Sanghatana

..Respondent

Mr. N. R. Bubna for Petitioners.

Mr. Pradyumna Thakur Desai i/b. Mr. Indrajeet Kulkarni for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 03, 2023

P.C.:

1. Heard Mr. Bubna, learned counsel for the petitioners.
2. This petition at the behest of Thane Municipal Corporation takes an exception to the judgment and order dated 20 April, 2013 passed by the Industrial Court, Maharashtra at Thane. Respondent no.1-union had approached the Industrial Court in complaint ULP No. 192/2007 alleging that the petitioners had indulged in unfair labour practices under Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 (for short, the “said Act”) against 32 Pharmacists who are in the employment of the petitioners. The primary grievance of the respondent was that the petitioner was not fixing the pay scales of the Pharmacists

and was not taking into consideration the report of the B.K. Naik Committee who had recommended the grade pay of Rs.1640-3432 in place of existing grade of Rs. 1490-3144 for the Pharmacists. The B.K. Naik Committee report is dated 14 July, 1998. The respondent contended that the said report was unanimously adopted by the general body of the petitioner-corporation, however, the petitioners had failed to implement the said resolution of the General Body. The respondent asserted that the petitioners should pay to the Pharmacists pay scale of Rs.1640-75-2090-85-2600-95-3170-EB-3800 and to pay all the allowances and consequential benefits.

3. The petitioners appeared in the proceedings before the Industrial Court, and opposed the complaint of the respondent inter alia contending that there was no unfair labour practice as the reports of B.K. Naik Committee and the subsequent Joshi Committee could not be regarded as an agreement, settlement or an award as contemplated under Item 9 of Schedule IV of the said Act and thus non compliance cannot be construed as unfair labour practice. Hence the primary contention of the petitioners was to the effect that the recommendations of the said Committee were required to be transformed into a binding document in the form of a settlement, agreement or an award and in the

absence of any such settlement, agreement or award, the complaint of any unfair labour practice against the petitioners was not maintainable.

4. The Industrial Court examined the rival contentions. The parties were also permitted to lead their respective evidence. After considering the materials on record and more particularly considering that there were comparative pay scales as available to the Government servants, the Industrial Court was of the opinion that it was not proper to straightway grant the pay scale to the concerned employees/pharmacists. It was observed that the petitioners will have to consider the issues and the settlement and the reports of the Committees and then take appropriate decision on fixing of the pay scale of the concerned employees. It was also observed that in case the approval of the State Government is required the same, may also be obtained and such exercise be undertaken by the petitioners within three months. It was observed by the Industrial Court that considering the evidence and the admissions as given by the witness of the petitioners, that some pay scales were higher than the pay scale of the government servants, pay scales of these employees were less than the pay scale of the government servants and therefore, certainly there was an element of unfair labour practice under Item 5 of Schedule IV of the said Act. Accordingly, the

directions were issued to the petitioners to take necessary action for fixation of pay scale of Pharmacists whose names appeared in Annexure-A to the complaint. The relevant observations of the Industrial Court as made in paragraphs 11, 12 and 13 as also in operative order are required to be noted which read thus:-

“11. The copies of the Award and Settlement and the report of the Committees are on record. The evidence clearly indicates that the pay scale of the concerned employees at some point of time was less than the government servants performing the same type of work. The respondents’ witness has stated that the pay scale has been revised broadly on the lines of 6th Pay Commission Report. She did not state that it was exactly on the line of 6th Pay Commission Report. The said witness has also admitted that some pay scale in the Corporation are higher than the government servants’ pay scale, particularly at the relevant time. As I said, witness Kadam could not deny that in 1991 the concerned employees drew less than the government servant. She also could not deny that upto 1996 the pay scale of the concerned employees were lesser than that of the government servant. It is clear that there are anomalies and contradictions in the pay scale, and therefore, there were certain pay scale which were higher than the pay scale of the government servant performing the same job. There are resolutions passed, and there are reports of the Committees which have not been implemented. According to the respondents the reports are required to be discussed, and without their being settlement signed, no claim can be made. In my view, the respondents cannot be heard to say that no action can be taken. The respondents are obliged to discuss with the complainant union as well as the concerned unions, and take appropriate decision for revision of the pay scale of the concerned employees who are Pharmacists. If necessary, the respondents will have to approach the government for necessary approval also. The plea of the respondents is that no claim can be made or nothing can be claimed unless there is any settlement. Such an approach clearly amounts to failure to make fixation which is the basic service condition which amounts to unfair labour practice under Item 9 of Sche.IV of the Act, 1971. The evidence indicates especially admission given by the respondents’ witness, that some pay scales were higher than the pay scale of the government servant. Pay scales of the concerned employees were less than the pay scale of the government servant. This amounts to unfair labour practice under Item 5 of Sche.IV of the MRTU & PULP Act, 1971.

12. Considering the facts and circumstances of the case, and the nature of dispute, it may really be not proper to straightway grant the pay scale to the concerned employees. The respondents shall have to consider the issues and the settlement and the reports of the Committees, and then take appropriate decision on fixing of the pay scale of the concerned employees. In case required, the approval of the State Government may also be sought. The respondents are expected to initiate the necessary action and complete the same within 3 months.

13. The respondents have raised the plea of limitation, but unsuccessfully. Failure to revise or fix pay scale is continuing in action. The unfair labour practice is continuing one, and therefore, cause of action is also continuing. The complaint, therefore, is not time barred. Hence the following order :-

ORDER

1. The respondents shall take necessary action for fixation of pay scale of the Pharmacists named in Annexure-A, as said hereinabove, and start paying according to the pay scale which may be fixed. Difference of arrears, in any, shall also be paid.
2. The respondents shall initiate necessary action and complete the same within 3 months.
3. No order as to costs.”

5. Mr. Bubna, learned counsel for the petitioners in assailing the impugned order has limited submissions. He submitted that there was no material before the Industrial Court to come to a conclusion that there was any unfair labour practice. I am not persuaded to accept such contention of Mr. Bubna. Certainly Municipal Corporation being a public body was required to determine and fix the pay scale of the Pharmacists who were permanent employees of the petitioners. From the record, it was clear that such exercise was not undertaken. The

impugned directions are only in the nature of permitting the petitioners to undertake an exercise to fix the pay scale. The petitioners cannot be heard to say that it would not comply with such directions to merely determine the pay scales and/or that the pay scale would not be fixed as directed by the impugned order. In fact, in my considered opinion, there was no prejudice whatsoever is caused to the petitioners by such balanced directions of the Industrial Court.

6. The writ petition is hence without merit. It is accordingly rejected. The Municipal Corporation is directed to complete the exercise within a period of four months from today. The impugned order itself being of the year 2013, there shall not be any further extension.

7. No costs.

[G.S. KULKARNI, J.]