

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

WRIT PETITION NO.2810 OF 2018

(PRABHAKAR PANDURANG RAKH...VS.. MAHARASHTRA STATE ROAD TRANSPORT CORPN,
ARNI ROAD, YAVATMAL)

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

Court's or Judge's orders

Shri C.V.Jagdale, Advocate for Petitioner.
Shri Prashik S. Gawai, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 09, 2023.

1. Heard.
2. The judgment and order dated 27/02/2017, passed by Labour Court, Yavatmal in Application (IDA) No.14 of 2011 filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947"), denying the prayer of the petitioner for grant of salary and other allowances, is under challenge in this petition.
3. It is the case of the petitioner that he was appointed on 08/05/1980 and then he filed a complaint before the Industrial Court vide Complaint (ULP) No. 81 of 2008, which came to be allowed and thereby it was directed that, as the petitioner has completed 180 days he shall be taken on time pay scale and all the benefits shall be paid with retrospective effect, vide judgment and order dated 29/11/2010. The said judgment and order of the

Industrial Court was the subject matter of challenge in Writ Petition No. 3826 of 2011 which came to be allowed and it was held that the petitioner is entitled to the reliefs as are granted by the Industrial Court vide judgment and order dated 29/11/2010 subject to satisfaction of the respondent Corporation that the petitioner satisfies all the conditions prescribed for his entitlement in terms of the resolution No.8856 dated 31/08/1978 read with Clause 19 of the Settlement of 1985 and the writ petition was disposed of by judgment dated 06/03/2012.

4. However, in the meantime, the petitioner filed application under Section 33-C(2) of the Act of 1947 and the same came to be dismissed vide judgment and order dated 27/02/2017, which is impugned in the present writ petition.

5. The learned counsel for the petitioner submits that once the petitioner has completed 180 days, he is entitled for the benefits namely the allowances and salary as per the Settlement of 1985 and in terms of Resolution No.8856, dated 31/08/1978.

6. It is submitted that the learned Labour Court has committed an error in denying such benefits though the petitioner has completed 180 days.

7. On the other hand, the learned counsel for the respondent supports the impugned judgment and order and submits that in absence of any pleadings in the application, to the effect that, the petitioner is entitled for the benefits as per the resolution No.8856, dated 31/08/1978 and in absence of any calculation made or any amount mentioned in the application, the learned Labour Court has rightly rejected the application made by the petitioner under Section 33-C(2) of the Act of 1947.

8. In the light of the rival contentions, I have perused the writ petition, documents and the impugned order.

9. From the record, it is evident that the Industrial Court allowed the complaint preferred by the petitioner to take him on Time Scale of Pay vide judgment and order dated 29/11/2019 holding that as per 1956 Settlement, the petitioner has completed 180 days in one financial year and therefore, he is entitled for the benefits under the said Settlement of 1956.

10. The said judgment and order was challenged before this Court by the respondent and this Court while allowing the writ petition and setting aside the judgment and order of the Industrial Court dated 29/11/2010 has held thus:

“6. In view of the aforesaid view taken by this Court, there is no escape but to hold that the judgment and order passed by the Industrial Court in all these cases need to be modified. Hence, all the Writ Petitions are allowed. It is held that the respondent/complainants shall be entitled to the reliefs as are granted by the Industrial Court in the judgment and order impugned in these petitions subject to the satisfaction of the petitioner/ Maharashtra State Road Transport Corporation that the respondent/complainants satisfy all the conditions prescribed for their entitlement in terms of Resolution No. 8856 dated 31.08.1978 read with clause 19 of 1985 Settlement.”

11. From the above referred paragraph of the judgment of this Court, dated 06/03/2012, it is evident that after considering the various judgments this Court has held the petitioner as entitled for the reliefs as are granted by the Industrial Court vide judgment and order dated 29/11/2010, subject to satisfaction of the respondent Corporation that the petitioner satisfies all the conditions prescribed for their settlement in terms of Resolution No.8856 dated 31/08/1978 read with Clause 49 of the Settlement of 1956.

12. After going through the application under Section 33-C(2) of the Act of 1947, it can be seen that the benefits are claimed as per the Settlement of 1956 and there are no pleadings to the effect that the petitioner is entitled for the benefits in terms of resolution No.8856,

dated 31/08/1978 read with Clause 19 of the 1985 Settlement.

13. It is the case of the petitioner that as he was appointed in the year 1980, the Settlement of 1985 will not apply to him. However, even if it is accepted there are no pleadings to the effect that the petitioner is entitled in terms of Resolution No. 8856, dated 31/08/1978, which is the condition while holding the employees entitled for the benefits as granted by the Industrial Court.

14. In the circumstances, in absence of any pleadings and the entitlement shown by the petitioner as observed by this Court in the judgment dated 06/03/2012, rejection of the application moved by the petitioner under Section 33-C(2) of the Act of 1947 is just and proper and there is no error committed by the learned Labour Court.

In view of above, the writ petition is **dismissed**.
No order as to costs.

JUDGE

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