



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

Writ Petition (WP) No. 4439 of 2022

The Commissioner, Nagpur Municipal Corporation, Nagpur and others

Versus

Pradip Nagorao Khobragade

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Abhay Sambre, Advocate for the petitioner.

Shri D.M.Kakani, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 10th OCTOBER, 2023.

Heard.

2. The judgment and order dated 5th May, 2022 passed by the learned Industrial Court in Complaint ULP No. 252 of 2018, directing the petitioner to grant pay-scale of Junior Engineer to the complainant from 14th June, 2016 along with consequential benefits, is under challenge in this writ petition.

3. In this matter the whole controversy revolves around a question whether the post on which the respondent was appointed i.e. Technical Assistant (Electrical) was the isolated post and therefore whether

the Government Resolution dated 1st April, 2010 is applicable to the respondent for claiming benefits of assured career progression scheme.

4. The complainant while claiming benefits of assured career progression scheme has stated in the complaint that the post on which the respondent was appointed is from the promotional channel. Even the prayer clause of the complaint shows that he did not ask for any relief namely grant of promotion but he simplicitor the pay scale of the Junior Engineer.

5. In addition to this, in cross-examination the respondent admitted that he was appointed on the isolated post and the benefits of assured career progression scheme is not applicable to the isolated post. Despite this fact the complaint was allowed on the ground that such benefit was granted to one Salodkar who was promoted in the year 1999.

6. Admittedly, even there are no pleadings made in the complaint seeking any relief based on the benefits given to Mr. Salodkar.

7. It is pointed out that first time in the examination-in-chief the fact of grant of benefit to Mr. Salodkar was brought on record and it was made the basis for grant of relief to the complainant.

8. The Government Resolution dated 1st April, 2010 is very clear which grants certain benefits under assured career progression scheme. However, the said scheme is applicable to the post in the promotion channels and not to the isolated post.

9. Therefore, it was expected that the complainant shall make necessary pleadings in the complaint to show that the said Government Resolution is applicable to the complainant. However, no such pleadings are made and despite the said fact the learned Industrial Court has granted benefit to the respondent.

10. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned Industrial Court to decide the same afresh after granting sufficient opportunity to the parties including the opportunity to amend the complaint or the reply or lead additional evidence or cross-examine the witness.

11. In that view of the matter, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The judgment and order dated 5th May, 2022 passed by the learned Industrial Court, Nagpur in Complaint (ULP) No. 252 of 2018 is hereby quashed and set aside;

- iii. The complaint (ULP) No. 252 of 2018 is restored back to its original number;
- iv. The learned Industrial Court, Nagpur is directed to decide the complaint afresh after giving complete opportunity to both the parties;
- v. The parties shall appear before the learned Industrial Court, Nagpur on **26th October, 2023** at 11 am;
- vi. The learned Industrial Court, Nagpur shall decide the same within six months from the date of appearance;
- vi. The learned Industrial Court, Nagpur shall not get influenced by any observations made by this Court.

[ANIL S. KILOR, J.]