



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4944 OF 2023

**JALGAON CITY MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER**

VERSUS

SAJAN SHENFADU JADHAV

Mr. L. V. Sangit, Advocate for the petitioner
Mr. U. S. Patil, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 14th JUNE, 2024

PER COURT :-

1. This petition takes exception to the judgment dated 13th July, 2022 passed by the Industrial Court in Complaint (ULP) No. 3/2020. The petitioner is the Municipal Corporation and apart from challenging the judgment on merit, alternatively it is prayed that the judgment which is passed without written statement of the petitioner be set aside by giving opportunity to the petitioner to file written statement and contest the claim on merit.

2. Learned counsel for the petitioner submits that the respondent had retired from the service in the year 2013. However, after lapse of about 7 years, he filed complaint in the year 2020 seeking benefits of 2nd ACP. It is his submission that though the service of notice

was effected on Municipal Corporation, no written statement was filed and that the respondent/complainant in the complaint was not cross-examined. According to him, this has resulted into passing of the impugned order. He claims that the petitioner is a public authority and public exchequer is involved herein.

3. Learned counsel for the respondent vehemently opposed to grant of any relief to the petitioner. It is his contention that the respondent is not at fault if the Petitioner-Corporation has chosen not to file written statement and contest the complaint. It is his further submission that even on merit he has case to get the benefits of 2nd ACP.

4. Though respondent had approached to the Labour Court after about 7 years of his retirement but there would be no justification for the petitioner-Corporation not to file written statement and to contest the said complaint. Learned counsel for the petitioner submits that on merit the petitioner has case to make out before the Industrial Court. Considering prayer of petitioner for decision before Trial Court on merit and also having regard to the time lapsed in between, this Court is of the view that if at all the petitioner is to be given an opportunity to the participating the proceedings of Complaint (ULP) No. 3/2020, the same could be allowed on merit of the case only. As such, the issue of

limitation is not permitted to be raised before the Industrial Court.

5. Care can be taken that the inconvenience caused to the respondent is mitigated by imposing appropriate costs as well as directing the Industrial Court to decide the complaint in time bound manner. Having regard to the facts and circumstances of the case, this Court is of the view that imposition of cost of Rs.10,000/- payable to the respondent by the petitioner would meet ends of justice. Petition, therefore, is allowed in following terms.

ORDER

- (i) The impugned order is set aside. Complaint (ULP) No. 3/2020 is restored to the file of Industrial Court.
- (ii) Both parties to appear before the Industrial Court on 1st July, 2024.
- (iii) The Petitioner/Corporation to file written statement on that day itself before the Industrial Court. The learned Industrial Court to ascertain the payment of cost to the respondent herein before taking written statement on record. If respondent is absent before the Industrial Court on the scheduled date of hearing, it is open for the petitioner to deposit the cost in the Industrial Court and respondent is at liberty to withdraw the same.
- (iv) If no written statement is filed, the matter shall proceed without written statement of the Petitioner/Corporation.
- (v) The learned Industrial Court to frame the issues/points for determination on the same day.
- (vi) The Industrial Court to complete the trial on or before 30th September, 2024.

- (vii) It is clarified that no extension of time shall be given.
- (viii) If parties remain absent before the Court, Court would be at liberty to proceed further with the matter by changing stages.

(R. M. JOSHI, J.)

ssp