



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

WRIT PETITION NO. 9977 OF 2024

Maharashtra State Transport Corporation Through Its Divisional Controller
VERSUS
Sanjay Sukhadeo Bhosale

Ms. A. V. Rotte, Advocate for petitioner
Mr. A. M. Reddy h/f Mr. A. U. Chandel, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 29th NOVEMBER, 2024

PER COURT :-

1. By consent of both sides, petition is taken up for final hearing.
2. Petitioner MSRTC takes exception to the judgment and order dated 05th January, 2024 passed in Complaint (ULP) No. 25/2018 by the Industrial Court whereby the petitioner was directed to pay scale of the complainant/respondent herein by protecting his pay scale on the post of 'Conductor'.
3. It is a case of the petitioner that the respondent/workman who was initially appointed in the service of the Corporation on 17.01.2011, working as a 'Conductor' (Class-III). Pursuant to the advertisement for recruitment dated 07.08.2012, he applied for the post of 'Assistant Junior Mechanic' (Class IV). Though, he did not apply

through department he got selected and joined his duties on new post on 23.08.2013. It is further case of the Corporation that due to the wrong interpretation of Circular dated 13.06.2005, earlier pay scale was re-fixed and he was allowed to draw salary of the pay scale of Conductor though he was working in Class IV post. This pay fixation is claimed to be illegal. Thereafter, his pay was fixed correctly, however since it was done without issuing notice and in non compliance of Section 9A of the Industrial Dispute Act, 1947 (for short '**ID Act**'), complaint came to be filed bearing No. 25/2018 before Industrial Court, Latur. Though Corporation appeared in the said proceeding however, failed to lead any evidence. This has resulted in Industrial Court allowing the said complaint by passing impugned judgment and order.

4. Learned counsel for the petitioner submits that the petitioner has more than fairly good case to succeed on merit before the Industrial Court. She contended that Circular dated 13.06.2005 is applicable only in cases where the person in the fresh appointment holds higher post than the post held earlier and only in such cases the previous pay is protected. It is her contention that as in the present case, respondent was not holding higher post than the previous post, this circular has no application to the case in hand. She further argued that disparity is created in respect of salary of respondent and other employees working

in his post/cadre. It is submitted that due to failure on the part of the Corporation to lead evidence before the Industrial Court, all these facts were not brought to the notice of the Court. She, therefore, seeks indulgence of this Court.

5. Learned counsel for the respondent supported impugned judgment by referring to the finding recorded by the Industrial Court that there was no notice issued under Section 9A of the ID Act before effecting the change in the service condition of the employee adversely and, therefore, this is not fit case to cause interference in impugned order.

6. Ordinarily, this Court would not have caused interference in the impugned order solely for the reason that the corporation has failed to lead evidence before the Industrial Court. However, in this case, non leading of the evidence has resulted in situation that the present respondent though is working on Class IV post, he is drawing salary more than other employees working on the same post. So also prima facie interpretation of circular is involved and that requires evidence too. In such circumstances, this Court finds it appropriate to give an opportunity to the petitioner/Corporation to lead evidence before the Industrial Court. This however can be allowed imposing cost on petitioner payable to respondent/workman. In the facts of the case said cost is

determined of Rs.10,000/-. Payment of cost to the respondent would be pre-condition for the restoration of the complaint before the Industrial Court.

7. In view of the above, impugned judgment and order is set aside. Complaint (ULP) No. 25/2018 is relegated back to the Industrial Court for decision afresh. Industrial Court to permit both sides to lead additional evidence. Remand of the matter need not be construed as de-novo trial. All issues and contentions raised by the parties are specifically kept open.

8. Learned counsel for the petitioner seeks direction to the Industrial Court for decision of the said complaint in time bound manner. Learned counsel for the respondent records no objection for the same. Industrial Court decide to complaint expeditiously and in any case within a period of six months from today.

9. It is clarified that observations made herein above are prima facie and for limited purpose of deciding this petition. The Industrial Court not to get influence by the same, while deciding complaint on merit after remand.

10. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

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