

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

WRIT PETITION NO.13971 OF 2024

Indian Bank	Petitioner
V/S	
Jayabai Shamrao Thakur	Respondent

**WITH
INTERIM APPLICATION NO.13763 OF 2024
IN
WRIT PETITION NO.13971 OF 2024**

Jayabai Shamrao Thakur	Applicant
IN THE MATTER BETWEEN	
Indian Bank	Petitioner
V/S	
Jayabai Shamrao Thakur	Respondent

Ms. Fatima Lakdawala *for the Petitioner-Bank.*
Ms. Samiksha Kanani (Legal Aid Counsel) *for Respondent in*
WP and for Applicant in IA(L) No.26059 of 2024.

CORAM: SANDEEP V. MARNE, J.
DATE : 23 OCTOBER 2024.

P.C.:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties Petition is taken up for final hearing and disposal.

2. The Petitioning-Bank has filed this Petition challenging judgment and order dated 4 January 2023 passed by Labour Court No.4, Pune, allowing Application (IDA) No.5 of 2021 filed by the Respondent and directing the Petitioner-Bank to pay to the Respondent an amount of Rs.2,78,724/- together with interest at the rate of 10% per annum from 5 May 1970 till actual realization in addition to costs of Rs.5,000/-. The amount is awarded by the Labour Court under provisions of section 33C(2) of the Industrial Disputes Act, 1947.

3. I have heard Ms. Lakdawala, the learned counsel appearing for Petitioner-Bank and Ms. Kanani, the learned counsel appearing for Respondent through Legal Aid. I have gone through the finding recorded by the Labour Court in the impugned order as well as records of the case produced alongwith the Petition.

4. It appears that by Circular dated 28 October 1980 Petitioner-Bank issued guidelines for fixing the rates of wages payable to part time Sweepers engaged for sweeping of the Petitioner-Bank's premises. Under the Circular dated 28 October 1980 the rates of wages to be payable to the part time sweepers was as under:

Floor Space Area in sq.ft. (Range)	Deployment Total Working hours per week	Rates of wages payable
0-500	3 hours or below	Rs.450/- p.m.
501-1000	More than 3 hours but less than 6 hours	Rs.740/- p.m.
1001-1750	6 to 13 hours	One-third scale wages
1751-4000	13 to 19 hours	One-half scale wages
4001-6000	19 to 29 hours	Three-fourth scale wages
Above 6000	19 to 29 hours	Full wages

5. It appears that Petitioner-Bank paid one-half scale wages to the Respondent on the ground that the area of Bank's premises where Respondent was engaged was less than 4,000 square feet. It is the contention of the Respondent that the area of the said premises is 4,120 square feet. Petitioner-Bank has relied upon copy of registered Lave and License Agreement dated 12 January 2011 by which the Petitioner-Bank has taken the premises on license and which reflects the area of the premises as 4,120 square feet built-up area. The Labour Court has proceeded to accept the said area of 4,120 square feet for the purpose of holding that the Respondent is entitled to be paid the rate of three-fourth scale wages under the Circular dated 28 October 1980. It appears that the Petitioner-Bank did not appear in Application (IDA) No.5 of 2021 and the same has been decided *ex-parte*. Ms. Lakdawala would therefore submit that the Application be remanded for fresh decision before the Labour Court after grant of opportunity to the

Petitioner-Bank. Upon being queried as to the exact error committed by the Labour Court in the impugned order, Ms. Lokdawala would invite my attention to the measurement report of Mr. Mahadeo R. Kalburgi, Valuer prepared on 7 April 2008, during conciliation proceedings reflecting the total sweeping area as 3,620.37 square feet. She would also rely upon report of another Valuer Mr. V.M. Gokhale, dated 14 June 2008 reflecting the total sweeping area at 3,959.48 square feet. She would therefore submit that the Petitioner-Bank be permitted to lead evidence by examining the concerned valuers. The second error pointed out by Ms. Lakdawala is that the date of initial appointment of Respondent which has erroneously assumed by the Labour Court as 5 May 1970. She would submit that the Respondent was engaged as part time Sweeper by order dated 28 March 1983. Ms. Kanani would fairly not dispute the position that Respondent was indeed engaged as part time Sweeper from 28 March 1983 and her previous services are irrelevant for the purpose of deciding her enticement about incorrect payment being made as a part time Sweeper.

6. Perusal of report dated 7 April 2008 of Petitioner-Bank's Valuer Mr. Mahadeo R. Kalburgi would indicate that though the total area of the premises is indicated at 3,620.37 square feet there is a note in the report that '*Carpet Area & Sweeping Area Front Side Ccompound 391.50 square feet*'. If this area in the front-side of

the compound which the Respondent was sweeping is added to 3,620.37 square feet, the total area becomes 4,011.87 square feet. Thus as per the report of Petitioner-Bank's Valuer Mr. Mahadeo R. Kalburgi the total area swept by Respondent is 4,011.87 square feet. There is an handwritten endorsement on the copy of the report which seeks to deduct toilet area 77.62 square feet, but I do not find any reason why toilet area is required to be excluded as Respondent was also cleaning the toilets.

7. In my view therefore, no patent error is committed by the Labour Court in inferring the total area swept by the Respondent exceeded 4,000 square feet and that therefore she is entitled to three-fourth scale wages as per Circular dated 28 October 1980. In that view of the matter, there is no necessity of remanding the proceedings for fresh decision by grant of opportunity to the Petitioner-Bank to lead evidence.

8. However few corrections in the impugned order of the Labour Court would be warranted. Firstly, the Labour Court has erroneously awarded the difference in the amount of wages from 5 May 1970 when in fact Respondent was appointed as part time Sweeper on 28 March 1983. Secondly, the Labour Court has erred in awarding interest from 5 March 1970 on the entire amount of difference of wages. Apart from the fact that the award of 10%

interest being excessive, the Labour Court has failed to appreciate the position that the application for payment of difference in wages was filed by Respondent on 3 March 2021 and therefore there was no warrant to award interest in respect of period prior to date of filing of the complaint. Therefore, three modifications in the impugned order of the Labour Court are warranted. Firstly Respondent would be entitled to difference in rates of wages from 28 March 1983 and not from 5 May 1970. Secondly she would be paid interest at the rate of 6% per annum, Thirdly such interest would be payable from the date of filing of the Complaint i.e. 3 March 2021 till the date of payment. To this limited extent the order passed by the Labour Court warrants modification and for such modification, it is not necessary to remand the proceedings to the Labour Court.

9. I accordingly proceed to pass the following order:

i) Judgment and order dated 4 January 2023 passed by Labour Court No.4, Pune in Application (IDA) No.5 of 2021 is modified to the following extent:

a) Petitioner-Bank shall pay to the Respondent difference between three-fourth scale wages and one-half scale wages for the period from 28 March 1983 till the date of her retirement. Petitioner-Bank shall pay to the Respondent interest at the rate of Rs.6% per annum on the total arrears of difference of wages from 3 March 2021 till the date of actual payment.

10. With the above directions, the Writ Petition is **partly allowed**. Rule is partly made absolute. There shall be no order as to costs.

11. With the disposal of the Writ Petition, nothing would survives in the Interim Application and the same is also accordingly **disposed of**.

(SANDEEP V. MARNE, J.)