



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

Writ Petition (WP) No. 4296 of 2016

Prakash S/o Maroti Raut

Versus

The Commissioner, Nagpur Municipal Corporation, Nagpur and others

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

Court's or Judge's Order

Shri V.P.Marpakwar, Advocate for the petitioner.

Shri S.N.Bhattad, Advocate for the respondent
nos. 1 to 3.

Shri Aalap Palshikar, AGP for the respondent no.4

CORAM : N.R.BORKAR, J.

DATED : 26th September, 2024.

P.C.

This petition takes exception to the judgment and order dated 9th March, 2016 passed by the learned Industrial Court in Complaint ULP No. 374 of 2011.

2. The petitioner, who was working as a Fireman with the respondent-Municipal Corporation, had filed the complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for the following reliefs :

i. declare that the respondents are engaged in unfair labour practices covered by the Item no.9 of Schedule

IV to the Maharashtra Act No.1 of 1972 as enumerated in the complainant.

- ii. direct the respondents to complete the Service Book of the complainant and thereupon extending the benefits of increments, higher pay scale and leave etc. after completion of 12 years of service as per Government order.
- iii. direct the respondents to pay arrears arising out of the above relief alongwith an interest at the rate of 18% per annum
- iv. grant any other or further relief including costs as may be deemed fit in the facts and circumstances of the case and also in the interest of justice.

3. By the impugned judgment and order, the learned Industrial Court has dismissed the complaint filed by the petitioner.

4. I have heard learned counsel for the petitioner and the learned counsel for contesting respondent-Corporation.

5. The learned Industrial Court has recorded the following findings :

28. The complainant claimed that, initially on 8.6.1984 he was appointed with the respondents being a Fireman in pay scale of Rs.220-375. The fact of appointment of the complainant on 8.6.1984 not denied by the respondents Corporation. The service book Exh.65 of the complainant maintained by the

respondents Corporation/employer and entries of Service Book not challenged by the complainant. The entries made in the service book Exh.65 shows that, the complainant was appointed as a Fireman for a temporary period of six months in the first instance on the pay at the rate of Rs.220 + other usual allowance as permissible under rules in pay scale of Rs.220-5-250-7-285-10-325-10-375 vide administrators order dt. 31.5.1984, communicated under order 108 dt. 5.6.1984. The complainant joined with the respondents Corporation on 8.6.1984, on careful perusal of entries made in the service book of the complainant shows that, the respondent employer made entries in respect of commuted leave and grant of other benefits including earned leave. The entries about earned leave shows that the complainant regularly earned 30 days earned leave for the year 1991 to 1996 and he encashed some earned leave. Though the complainant cross-examined the respondents' witness on point of entries made in the service book, however, the complainant has not brought anything on record to discard testimony of the respondents' witness and to falsify entries made in the service book. The grievance of the complainant is that though he discharged duty from the month of March 1994 till July 1996 but no salary has been paid to him. The respondents have produced memo dt. 28.2.1991 Exh.65-A, memo dt. 23.8.1991 Exh.66, letter dt. 30.9.1991 Exh. 67, memo dt. 9.8.1996 Exh.68, memo dt. 8.5.1998 Exh.69, memo dt. 3.7.1998 Exh.70 and letter dt. 19.9.1998 Exh.71 about unauthorized absence of the complainant for the period 1.10.1995 to 3.2.1996 total 34 days, 24.2.1991 to 13.2.1991 total 12 days, 24.8.1991 to 15.9.1991 total 22 days, 23.5.1992 to 15.6.1992 total 23 days, 16.3.1996 to 25.3.1998 total 10 days and 16.5.1998 to 3.7.1998 total 48 days.

However, the complainant has not given any explanation that he was on duty for the period mentioned in Exh.70. It is well settled principle of law that, if the employee did not perform work and remains unauthorized absence without prior permission of the employer then the concerned employee cannot claim payment for absence period as on the basis of 'no work no pay'.

29. On perusal of entries made in Exh.65 service book of the complainant, it shows that, on 15.11.2008, the respondent-Corporation fixed higher pay of the complainant in pay scale of Rs.4000-100-6000 w.e.f. 1.10.2001 from the pay scale of Rs.3200-85-4900 on completion of 12 years service, which is time bound promotional benefits in pursuance of G.R. dt. 8.6.1995 Exh.32. So also, the complainant was granted annual increments time to time. Not only this, but the entries made in service book Exh.65 shows that, the complainant granted revised pay scale as per 6th Pay Commission vide circular dt. 22.12.2000 and his pay band fixed Rs.5200-20,200 grade pay Rs.2400/- and entries about revised pay scale made in his service book. The complainant has not brought anything in cross-examination that the entries made in his service book Exh.65 are incorrect or false and he has not been granted benefits of increments and higher pay scale after completion of 12 years service in pursuance of G.R. dated 8.6.1995 Exh. 32. Though the complainant claimed that the respondents have not released increments from 1991 to 1996 and not maintained his service book properly does not appear to be bonafide and justifiable, therefore, I have no hesitation to hold that the complainant failed to prove Issue nos. 1 and 2 and no sufficient material brought on record to conclude that, the respondents are indulged into unfair labour practice under Item 9 Schedule IV of the MRTU &

PULP Act. Accordingly, I answered issue nos. 1, 2 and 4 in negative and proceed to pass the following order..”

6. As regards the prayer for non-payment of salary for the period from March-1994 till December 1996 and from January, 1996 till July, 1996, the learned Industrial Court has recorded the finding that the petitioner was unauthorisedly absent. The said finding is not shown to be perverse. As regards the prayer for time bound promotion from the year 1996, the unauthorised absence is a serious misconduct and therefore, the time bound promotion was rightly not granted from the year 1996. Thus, no interference is called for in the impugned judgment and order. Accordingly, the writ petition is dismissed.

[N.R.BORKAR, J.]