



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

WRIT PETITION (WP) NO.1273 OF 2018

- 1) Kailas s/o Bhimrao Patil,
Aged about 50 years, Occ. Service,
R/o Mudliyar Nagar, Amravati.

.... Petitioner(s)

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- 1) The Registrar,
Sant Gadge Baba Amravati University,
Amravati.
- 2) The Chancellor,
Sant Gadge Baba Amravati University,
Amravati.

... Respondent(s)

Shri N.R. Saboo, Advocate for the Petitioner/s

Shri S.S. Ghate, Advocate for the Respondent Nos.1 and 2

CORAM : ANIL S. KILOR, J.

DATED : 08.01.2024

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. This writ petition takes exception to the judgment and order passed by the learned Industrial Court, Amravati dated 25.09.2017, dismissing the complaint filed by the petitioner under the provisions of the Section 28 read with Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, alleging that the respondents are engaged in unfair labour practice.

4. The brief facts of the present case are as under:

The complainant was working with the respondents since 01.09.1989 on daily wages basis as 'Clerk' and it is alleged that when the complainant has pressed his demand in respect of extending the benefits of permanency, his services were terminated on 31.12.1991, against which, the complaint was filed before the Labour Court and by way of interim protection in the said complaint, the complainant was reinstated in services.

5. Thereafter, the matter was settled before the Lok-Adalat and thereby, the petitioner/complainant was appointed w.e.f. 01.03.1993 on the post of 'Jr. Clerk' on certain conditions that,

including the petitioner shall withdraw the court proceedings and further the petitioner would not get benefits of past services.

6. In light of the above referred settlement, the petitioner filed a pursis for withdrawal of the complaint, reserving the rights of the complainant. Accordingly, the learned Labour Court, Amravati allowed the petitioner to withdraw the complaint ULP No.21 of 1992 vide order dated 21.06.1993.

7. The petitioner thereafter, filed the complaint ULP No.80 of 2010, claiming benefits of seniority, pay scale, increments and other benefits w.e.f. 01.09.1989 i.e. from the original date of the appointment.

8. The said complaint was dismissed vide impugned judgment and order dated 25.09.2017 on two grounds; firstly, the employees who are juniors to the petitioner and received similar benefits as claimed by the petitioner, they received it because of order of this Court and secondly, as the matter was compromised and as per the terms of the compromise, the petitioner agreed not to claim any benefits for his previous services.

9. I have heard the learned counsel for the respective parties.

10. The learned counsel for the petitioner submits that under the prevailing circumstances, at the relevant time, the petitioner had no options than to sign the undertaking and accepted the terms and conditions of the appointment order dated 01.03.1993. It is submitted that, such compromise would not take away the statutory rights of the petitioner.

11. It is submitted that this Court has granted similar benefits to the juniors employees than the petitioner, which the petitioner is claiming. It is therefore, submitted that the petitioner is entitled for grant of such benefits. The learned counsel for the petitioner has placed reliance on the judgment of the Co-ordinate Bench of this Court dated 06.04.2016 in Writ Petition No.1823 of 2011 (*Ahmednagar Municipal Council Vs. Malan Kisan Asmar and others*) and other connect matters.

12. On the other hand, the learned counsel for the respondents submits that the learned Industrial Court has rightly rejected the complaint and thereby, denied the reliefs sought by the petitioner.

It is submitted that the Executive Council of the University took a decision to appoint 22 employees including the petitioner on certain terms and conditions, which were accepted by the petitioner and therefore, now once the petitioner has accepted the terms and conditions and signed the undertaking, he cannot raise any challenge to such terms and conditions, as it would amount to approbate and reprobate. He therefore, submits that the present writ petition deserves to be dismissed.

13. In light of the rival submissions of the parties, I have perused the record and the impugned judgment and order.

14. In similarly circumstanced employees, who were juniors to the petitioner, this Court has held against the respondents and granted all the benefits as permanent employee. The respondents are not disputing the fact that the junior employees have received the benefits as claimed by the petitioner along with the difference of salary and other pecuniary benefits.

15. The Co-ordinate Bench of this Court in Writ Petition No.2590 of 2004 (*The Amravati University Vs. Shashikant*

Tulsiramji Tarale and others) vide judgment dated 22.08.2006, has categorically observed that, the Management Council of the University passed the resolution on 22.09.1996 and thereby, decided to absorb 89 employees who were working since 1987-92 on the vacant posts, as per their seniority, after taking into consideration the norms like qualification and reservation policy etc. This Court further observed that the employees would not be entitled for backwages but they shall be granted continuity of service from the date of their initial appointments for the purpose of all other service benefits.

16. The Co-ordinate Bench of this Court in the case of *Ahmednagar Municipal Corporation* (supra), has held thus:

“33. In the above referred judgments, the Honourable Supreme Court as well as this Court has laid down the law that any such concession wrongly made or made under a wrong belief, would not dis-entitle the employees from the statutory benefits available to them. It is concluded that any such concession given, against a statutory right, would have no acceptability or relevance while determining the rights and liabilities incurred or acquired in view of the axiomatic principle that there cannot be any estoppel against the Statute.”

17. In light of the above referred observation, it is evident that any concession wrongly made or made under a wrong belief, would not dis-entitle the employees from the statutory benefits available to them. Any such concession given, against a statutory right, would have no acceptability or relevance while determining the rights and liabilities incurred or acquired in view of the principle that there cannot be any estoppel against the Statute.

18. In the matter at hand, admittedly, the complaint ULP No.21 of 1992 was withdrawn by the petitioner, reserving the rights of the petitioner. Moreover, considering the fact that at the relevant time when the petitioner was working on daily wages and he was offered regular appointment, he had no other option than to accept the terms and conditions. However, any such undertaking giving up his statutory rights will not come his way as estoppel for claiming the statutory rights.

19. In the circumstances, though the appointment order shows that the petitioner would not be entitled for the benefit of past services, I am of the opinion that, the petitioner is entitled for

continuity in service from the date of his initial appointment after all other service benefits.

20. In that view of the matter, I am of the opinion the learned Industrial Court has committed error in denying the relief to the petitioner. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The judgment and order dated 25.09.2017 passed by Industrial Court, Amravati in Complaint ULP No.80 of 2010, is hereby quashed and set aside.
- (iii) The matter is remanded back to the learned Industrial Court, Amravati to decide the same afresh on merits, in accordance with law.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]