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

WRIT PETITION NO. 9625 OF 2024

Yashwant Kondiba Ghangale and Anr. .. Petitioners

Versus

Kalyan – Dombivali Municipal Corporation and
Anr. .. Respondents

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- Mr. Sanjeev Sawant a/w. B.K. Karve, Mr. Sandeep Barve, Simmy Sebestan, Advocates i/by B.K Barve & Co. for Petitioners.
 - Mr. Sandeep D. Shinde, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 12, 2025.

P.C.:

1. Heard Mr. Sawant, learned Advocate for Petitioners and Mr. Shinde, learned Advocate for Respondents.

2. By the present Writ Petition, Petitioners are impugning judgment dated 17.12.2022 passed by the Industrial Court, Thane in Complaint (ULP) No.276 of 2016 raised by the Petitioners.

3. Both Petitioners were working as drivers in the services of Respondent No.1 – Kalyan Dombivali Municipal Corporation (for short ‘**Corporation**’) since the year 1992-1993 onwards. Appended at page No.63 is their order of appointment on the post of driver in the services of the Corporation. Apart from the 2 drivers, there were several other persons who were also employed as drivers in a similar capacity in

various departments of the Corporation. It is claim of Petitioners that in the year 1995 they were posted as Driver-cum-Operator in the Fire Brigade Department of the Corporation and were required to drive and operate Fire Brigade Engines. They therefore filed a complaint seeking promotion as Driver-cum-Operator and sought parallel benefits in salaries and allowances to be given to them for the period upto 2013 when they were promoted subsequently. They being posted in the Fire Brigade Department. Their claim was rejected by the Industrial Court leading to filing of the present Petition.

4. Mr. Sawant, learned Advocate appearing for Petitioners would submit that Petitioners were engaged as Driver-cum-Operator since 1995 with the Corporation and the Corporation engaged in unfair labour practices. He would submit that they were transferred from General Vehicle Department to the Fire Brigade Department on and from 16.06.1995 but they were designated merely as drivers despite they being eligible for promotion to the post of Driver-cum-Operator in a higher pay scale.

5. In support of Petitioners' case, Mr. Sawant has drawn my attention to page No.90 of the Petition when sometime in the year 2007 the Corporation decided to confer promotion on persons like the Petitioners who were employed as Driver-cum-Operator and accordingly resolved and pass a resolution to that effect in their

General Body Meeting held on 20.01.2007. He would drawn my attention to the subject resolution appended at page No.90 to submit that Corporation took cognizance of the fact that Petitioners were infact working on the post of Driver-cum-Operator and therefore deserve to be promoted. However, he would fairly argue and inform the Court that the said resolution though passed by the Corporation resolved that the Commissioner would take further steps for obtaining sanction from the State Government which steps were never taken thereafter and the resolution remained on paper only. He would emphasis that passing of the resolution proves that Petitioners worked as Driver-cum-Operator and not merely as driver.

6. In support of his submissions, he would refer to and rely upon order dated 04.05.2012 appended at page No.93 of the Petition to submit that Petitioners alongwith 6 others (total 8 persons) were temporarily elevated to the post of Driver-cum-Operator in the pay scale of Rs.5200-20200 + Grade Pay Rs.2400/- for a period of six months initially on probation for the first time. While reading that order, he would submit that Petitioners deserved promotion as Driver-cum-Operator right from inception. He would vehemently submit that role of Petitioners was not of driver but Driver-cum-Operator in the Fire Brigade Department and hence Petitioners sought permanent regular promotion to the post of Driver-cum-Operator in the higher pay scale of Rs.5200-20200 + Grade Pay Rs.2400/- right since inception.

7. He would submit that Petitioners having denied the claim filed Complaint (ULP) No.276 of 2016 under Section 28 read with Item 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short '**MRTU & PULP Act**') in the Industrial Court seeking the aforesaid relief. He would submit that in view of the facts which are undisputed the Petitioners' complaint ought to have been allowed. However, by the impugned order dated 17.12.2022 the complaint was rejected by the Industrial Court holding that Petitioners failed to prove that they are entitled to be promoted, absorbed, confirmed as Driver-cum-Operator w.e.f. 16.06.1995 or from the completion of 6 months thereafter and hence Petitioners have knocked the door of this Court. He would therefore urge the Court to allow the Petition and set aside the impugned judgment dated 17.12.2022.

8. *PER CONTRA*, Mr. Shinde, learned Advocate appearing for the Municipal Corporation would submit that at the outset Petitioners' Case / Complaint / Writ Petition is not maintainable considering that Petitioners' appointments were not on the post of Driver-cum-Operator at the outset. He would submit that Petitioners were appointed as drivers at the threshold only and thereafter as per their seniority they were given due promotion and promoted as Driver-cum-Operator in 2012 – 2013. He would submit that if the Petitioners' claim of considering their appointment on the post of Driver-cum-Operator

from 1995 is considered, then all those senior drivers who were also eligible for promotion of Driver-cum-Operator in the year 1995 – 1996 would have to be given promotion before the Petitioners. He would submit that Petitioners' claim / complaint seeking absorption to promotional post without following process for promotion and as per seniority is not maintainable and if that is given to them, they would *prima facie* supersede their seniors who would be entitled to promotion before them.

9. He would submit that there is no case of discrimination whatsoever or unfair labour practice proved by Petitioners. He would submit that in 2012 Petitioners were promoted as Drivers-cum-Operators as per seniority. He would submit that appointment of Petitioners in the Fire Brigade Department was only as driver right from inception. He would submit that after they having completed a period of 12 years continuous services alongwith similarly placed drivers they were given the benefit of selection grade on and from 10.04.2007 and they have already been given the benefit of promotional posts by virtue of the said selection grade in which they were placed. He would submit that after taking this benefit it cannot now lie in the mouth of Petitioners to claim the benefit from the date of their initial appointment. He would submit that though Petitioners were placed in the Fire Department they performed work of driver only and they were never given the duties of Driver-cum-Operator. He

would submit that transfer of Petitioners to the Fire Brigade Department in the year 1995 was as driver only which can be seen from the transfer order appended to the Petition.

10. He would submit that it is incorrect on the part of Petitioners to allege that there was vacant post of Driver-cum-Operator despite which Petitioners were absorbed as drivers in the Fire Brigade Department. That apart, he would submit that invocation of Item 9 in the Application for unfair labour practices practiced by the Corporation is totally false and baseless as there was never any agreement between the Union / Petitioners / Employees and the Corporation of posting the Petitioners as Driver-cum-Operator or they being entitled and eligible for such benefits from 1995. He would submit that Petitioners alongwith similarly placed employees were regularly promoted as Driver-cum-Operator on and from 05.04.2013 when recruited to the said post. Hence he would submit that Petitioners would not be entitled to any benefit of that post with retrospective effect from the date of their initial appointment in 1995.

11. To counter the submission of Mr. Sawant that in the evidence it was recorded before the Industrial Court by Petitioners' witness that Petitioners were made to do work of Driver-cum-Operator in the Corporation and therefore they were fully eligible for the post of Driver-cum-Operator cannot be countenanced when there is no

material or documentary evidence placed on record to that effect.

12. He would submit that this submission cannot *per se* prove the fact that Petitioners were engaged as Driver-cum-Operator when their initial appointment was merely as drivers with the Corporation. He would submit that the witness who has deposed on behalf of Petitioners has stated that he got work done from the Petitioners of Driver-cum-Operator but that merely by itself does not qualify the Petitioners' eligibility for that post. He would submit that fire fighting vehicle is specialized vehicle and any person operating it requires substantial training to operate the said vehicle apart from driving the said vehicle since there are various technical impediments which are required to be handled by the said driver while fire fighting operations. He would submit that once the Petitioners original appointment was as driver only Petitioners were granted promotion on a higher pay scale only as per their seniority and therefore the impugned order has correctly analyzed the aforesaid position and rejected the complaint filed by Petitioners. Hence, he would urge the Court to dismiss the Writ Petition.

13. I have heard the learned Advocates appearing for the respective parties and considered the record of the case. Submissions made by them have received due consideration of the Court.

14. At the outset, it is seen that Respondent No.1 – Corporation has two fire stations, one is at Dombivali and second is at Kalyan. It is seen that Petitioners were admittedly appointed originally as drivers with the Corporation. However their appointment order shows that their posting as drivers was in the Fire Brigade Department. Their appointment order speaks for itself.

15. What is intriguing is the fact that Complaint (ULP) was filed by the Petitioners in the year 2016 much belatedly and not immediately after completion of their probation. The crux of the matter is that it is the Petitioners' case that from June 1995 they were employed as Driver-cum-Operators in the Fire Brigade Department of the Corporation and the nature of their duty and work involved was that of Driver-cum-Operator and not merely as driver.

16. In that view of the matter, Petitioners approaching the Industrial Court much belatedly in the year 2016 raises questions on delay and laches. Apart from the fact that there is a gross delay in lodging the said claim on behalf of Petitioners, on merits it is *prima facie* seen that Petitioners were promoted as Driver-cum-Operators in the higher pay scale and were given the due benefit on and from 05.04.2013 as per their seniority after completing their probation. It is an admitted position that initially Petitioners were promoted as Driver-cum-Operator for a period of 6 months on probation basis by order

dated 04.05.2012. That order is appended to the Petition at page No.93. There were a total 8 drivers including the Petitioners who were placed on probation by virtue of this order as can be seen on reading the said order. After completing the probation period, Petitioners were given regular promotion to the post of Driver-cum-Operator in the pay scale of Rs.5200 – 20200/- + Grade Pay of Rs.5200/- by order dated 04.05.2012. Petitioners have acknowledged both these orders in paragraph No.5 of their ULP complaint. However grievance of Petitioners is that between 1995 and 2012 Petitioners ought to have been given the benefit of the pay scale of Driver-cum-Operator since it is their case that even though they were posted in the Fire Brigade Department as drivers they were made do the job of Operator. This claim of the Petitioners *prima facie* is preposterous especially in the background of the fact that Petitioners received due promotion according to their seniority in the desired pay scale in the year 2012 – 2013 and thereafter only in the year 2016 filed the present ULP complaint as a complete afterthought. If it was the Petitioners' claim that Petitioners were made to do work of Driver-cum-Operator from 1995 onwards, it was their duty to immediately approach the Corporation/ Labour Court with their grievances. Petitioners did not choose to do so. It is *prima facie* seen that Petitioners were infact originally appointed to the post of driver in the year 1992 – 1993. Their letter of appointment is appended at page Nos.56 and 57 of the

Petition respectively. Thereafter in the year 1995 by a detailed order in respect all drivers employed by the Corporation they were given various postings in different Departments as drivers only. Appointment order of 1995 is appended at page No.63 of the Petition from where it is seen that Petitioners were posted in the Fire Brigade Department at Dombivali and Kalyan respectively as drivers. The appointment order of 1992 as well as the posting order of 1995 *prima facie* referred to appointment and designation of the Petitioners as 'Drivers – वाहन चालक'.

17. In that view of the matter, Petitioners' claim for a higher pay scale from 1995 onwards cannot be considered out of turn primarily in view of the fact that there were several other drivers who were senior to the Petitioners having put in more number of years and Petitioners could not be given out of turn promotion by disregarding the regular promotion of drivers according to their seniority. This is the sum and substance of the decision returned by the Industrial Court which is found in paragraph No.20 of the impugned judgment while deciding issue Nos.1 and 2 comprehensively. For the sake of reference and brevity, paragraph No.20 is reproduced herein below:-

"20. It is the case of the complainants that as per information given by the respondent corporation under RTI, which is at Exh.U-29, there were 23 vacant posts of driver operator in respondent corporation. It is the case of the complainants that inspite of vacant posts against which they were working, they were not given the post of driver cum operator though there

were 23 vacant posts in the corporation. Admittedly, the posts of driver operators is promotional post. As per that authorities relied by counsel for respondents reported in State of Punjab & Anr. Vs. Subash Chander Oberoi the transfer order specifically stipulated that the employees shall be paid salary in the scale he was working. He accepted the same without objection. Subsequent claim of requisition to higher post is not maintainable. So the complainants were transferred to Fire Brigade Department accepted their transfer as driver, they did not raise any objection and worked there for year together. Later on, they accepted time bound promotion and regular promotion was given by the employer. Hence, now they cannot claim the benefits of higher post from the date of their transfer. For giving promotion seniority list is to be maintained and as per the seniority promotions are given. The witness examined by complainants Nandkumar Haribhau Gore retired Station Officer deposed that he was taking the work of driver operator from the complainants and the complainants were fully eligible for the post of driver operator. He admitted that Fire Fighting Vehicle is specialized vehicle and it requires training of 3-4 days for work of drivers operators. This person got the work done from the complainants of driver operator that does not mean that they were eligible for that promotion. Had the complainants demanded the post of driver operator immediately after their transfer to Fire Brigade Department, then the respondents might have follow the procedure for the promotion to that post, the day on which the complainants were transferred to the post of driver operator, they were not eligible for that post. Their appointments were not on that post. As per the seniority, they were not even eligible for the promotion. To direct the respondents to absorb or regularize the complainants on the posts of driver operator amounts to interference by the Court in the process of selection. The senior drivers who were also eligible for the promotion of driver operator in the year 1995-96 were also required to be given opportunity, if those posts were to be filled. If the complainants are absorbed for the post of driver cum operator from the day, they were transferred to Fire Brigade Department, then it will cause serious prejudice to the drivers, who were senior to the complainants on that day. The complainants by filing this complaint want absorption to promotional post without following process required for the promotion and they also wants to supersede who were seniors to the complainants and were entitled for promotion before the complainants. So if the complainants are given the benefit of higher post from the year 1995-96, then it would be injustice on the person who were seniors to the complainants. So in my view the complainants failed to prove that they were entitled for the promotional posts of driver cum operator in the year 1995-96 as they were working in Fire Brigade Department. Hence, there is no case of discrimination proved by the complainants on the part of the respondents. Moreover, the complainants after getting the promotion started demanding the promotional posts from the year 1995-96. Hence, there is no unfair labour practices proved

by the complainants under item 5 and 9 of Schedule IV of the MRTU & PULP Act and the complainants are not entitled to be promoted, absorbed and confirmed as driver cum operator with retrospective effect. Hence, I answer Issues no. 1 and 2 in the negative.”

18. Mr. Sawant, learned Advocate appearing for the Petitioners would refer to and rely upon three decisions of the Supreme Court and one decision of the Madras High Court to submit that Petitioners would be deserving equal pay and equal work considering the nature of their duties undertaken by them. Mr. Sawant would be right if Petitioners’ case is not only adequately proved but there is substantial material and evidence on record to agree to the Petitioners’ claim of their appointment as Driver-cum-Operator. When it is *prima facie* seen and is an admitted position that appointment of Petitioners was in the post of driver only and the Petitioners carried out their duties as drivers between the year 1995 – 2012 without protest as per their appointment and after getting their due promotion according to their seniority worked as Driver-cum-Operator, it now cannot lie in the mouth of the Petitioners to seek their claim retrospectively.

19. In that view of the matter, reliance on the judgment of the Supreme Court in the case of *Randhir Singh Vs. Union of India and Ors.*¹ in the facts of the present case is completely misplaced and not applicable. Mr. Sawant has also referred to and relied upon the decision of the Supreme Court in the cases of *Selvaraj Vs. Lt. Governor*

¹ 1982 0 Supreme (SC) 68

*of Island, Port Blair & Ors.*²; *Dwarka Prasad Tiwari Vs. M.P. State Road Transport Corporation & Anr.*³ and the decision of the Madras High Court in the case of *Tamil Nadu Tourism Development Corporation Officers Association, represented by its Secretary Vs. Tamil Nadu Tourism Development Corporation Ltd., represented by its Managing Director & Anr.*⁴.

19.1. On reading of the aforesaid decisions, it is *prima facie* seen that the facts in the above referred cases are *prima facie* different than the facts in the present case. Once the facts in the present case are primarily admitted and based upon the claim of Petitioners' that they were called upon to do the work of Driver-cum-Operator despite being appointed as driver and the same having been adequately dealt with and decided in the facts and circumstances of the present case and when it is seen that the Petitioners have already received the benefit of promotion according to their seniority, the ratio of the aforesaid cases cannot be considered to grant of claim of the Petitioners.

20. Though Mr. Sawant would persuade me to consider the fact that Petitioners were given the work of Driver-cum-Operator during their tenure as drivers in the Fire Brigade Department between the year 1995 – 2006, I am not inclined to accept the said submission merely on the deposition of the witness of Petitioners because the said

2 1998 8 Supreme 532 : 1998 0 Supreme (SC) 343

3 2001 7 Supreme 48 : 2001 0 Supreme (SC) 1278

4 2006 0 Supreme (Mad) 1511

submission is not backed by any documentary evidence neither any cogent evidence whatsoever, save and except the statement made by the said witness. That apart, Petitioners have no answer with regard to the promotion to be given to the drivers who were senior to the Petitioners in question at the time of their initial employment in the year 1992 – 1993.

21. Hence considering the admitted fact that appointment of the Petitioners at the inception stage in the year 1992 – 1993 or during the time of their posting in the Fire Brigade Department in the year 1995 was admittedly on the post of Driver – वाहन चालक, the Petitioners' case has been correctly dealt with by the learned Industrial Court while arriving at a reasoned decision in paragraph No.20 after analysing the case of Petitioners as well as the Corporation. I find no reason to interfere with the findings returned by the learned Industrial Court in the judgment dated 17.12.2022 passed in Complaint (ULP) No.276 of 2016. The said judgment is upheld. Resultantly, Writ Petition fails.

22. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Ajay

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