

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

WRIT PETITION NO.3440 OF 2008

Armed Forces Ex-Officers' Multi
Services Co-operative Society Ltd.
Lokmanya Tilak Sabhagriha Bldg.
364, Gokhale Road, Pune – 15.

....Petitioner

V/S

Pune Mazdoor Sabha
54, Budhwar Peth
Laxmi Road, Pune – 411 002.

....Respondent

**WITH
INTERIM APPLICATION NO.12758 OF 2024
(under Section 17-B of the Industrial Disputes Act)
IN**

WRIT PETITION NO.3440 OF 2008

Pune Mazdoor Sabha
54, Budhwar Peth
Laxmi Road, Pune – 411 002.

....Applicant

IN THE MATTER BETWEEN

Armed Forces Ex-Officers' Multi
Services Co-operative Society Ltd.
Lokmanya Tilak Sabhagriha Bldg.
364, Gokhale Road, Pune – 15.

....Petitioner

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....Respondent

Mr. Anand Pai with Mr. Vipul Patel i/b M/s. Haresh Mehta & Co. *for Petitioner-Society-Employer in WP 3440 of 2008 and for Respondent-Society-Employer in WP No.3940 of 2008 and in IA.*

Mr. A.S. Rao *for Respondent-Union in WP 3440 of 2008 and for Petitioner-Union in WP 3940 of 2008 and for Applicant-Union in IA.*

**CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 08 APRIL 2025.
PRONOUNCED ON : 16 APRIL 2025.**

J U D G M E N T :

1. These are cross Petitions filed by the employer and the employee challenging the Award dated 21 January 2008 passed by Industrial Tribunal, Pune, in Reference (IT) No.28 of 2005 by which termination of 53 members of the Union is set aside and

the employer is directed to reinstate the employees with continuity of service, but without backwages. Writ Petition No.3440 of 2008 is filed by the Employer-Society challenging the entire Award dated 21 January 2008, whereas Writ Petition No.3940 of 2008 is filed by the Union to the limited extent of rejection of prayer for backwages.

2. Armed Forces Ex Officers' Multi Services Co-operative Society (**Society**) is formed by Ex Officers of the Defence Forces whose main activity is to provide various services such as transport, gardening, security, housekeeping, etc on contract basis in and around the city of Pune. The Society was awarded transport contract in the year 1973 by Tata Motors Limited under which the Society was to provide Drivers for driving of buses owned by Tata Motors for transportation of its employees. According to the Society, it had engaged 53 Drivers solely for execution of the contract awarded by Tata Motors. It appears that the Society also had similar contracts with other Companies for which it had engaged additional Drivers. Employer terminated the contract with Tata Motors on 10 November 2004 and terminated the services of 53 Drivers by paying them one month salary in lieu of notice and retrenchment compensation.

3. The Union representing the said 53 retrenched Drivers raised industrial dispute challenging the terminations. Upon failure of conciliation proceedings, Reference (IT) No.28 of 2005

was registered. The Reference has been answered by the Industrial Tribunal in the affirmative by setting aside the termination of 53 Drivers and directing the Society to reinstate them with continuity, but without backwages. These cross Petitions are filed challenging the Award dated 21 January 2008. By order dated 26 June 2008, this Court admitted Writ Petition No.3440 of 2008 and stayed the implementation of the Award granting liberty to the Union to file individual Affidavits under Section 17-B of the Industrial Disputes Act, 1947 (**ID Act**) for payment of last drawn wages. The Union has filed Writ Petition No.3940 of 2008 challenging the Award to the extent of denial of backwages.

4. Though this Court granted liberty to the Union to file Applications/Affidavits for payment of last drawn wages under Section 17-B of the ID Act, it appears that such Applications/Affidavits were not filed immediately after admission of the Petition. Interim Application No.12758 of 2024 is filed seeking wages under Section 17-B of the ID Act only on 8 August 2024. The Petitions are called out for final hearing.

5. I have heard Mr. Pai, the learned counsel appearing for the Employer-Society and Mr. Rao, the learned counsel appearing for the Union.

6. The impugned Award was passed by the Industrial Tribunal on 21 January 2008 directing the reinstatement of 53 members of the Union. During pendency of the present Petitions, 7 members of the Union have passed away, 30 of them have crossed the age of retirement and only 16 Drivers are yet to attain the age of superannuation. The Labour Court did not grant them backwages till the date of the Award. This Court stayed the implementation of the Award by interim order dated 26 June 2008. Though liberty was granted to file Affidavit under Section 17-B of the ID Act for payment of last drawn wages during pendency of the Petitions, such opportunity is admittedly not availed by the Union or any of its members. Such Application came to be filed by the Union for the first time in August 2024. Thus for 16 long years, the concerned workers did not think it necessary to even apply for payment of last drawn wages during pendency of the Petitions.

7. Thus, the position that prevails as of now is that backwages were denied to the 53 Drivers by the Industrial Tribunal and after admission of the Petition, they did not apply for payment of last drawn wages. Out of the 53 Drivers, 37 are not available for reinstatement on account of retirement and death. Only 16 Drivers are available for reinstatement as of now. Mr. Pai has however shown willingness to reinstate the 16 remaining Drivers. However they are also at their advanced ages and it is highly doubtful as to whether they would be in a

position to drive buses at such advanced ages. Considering this situation, in my view, reinstatement of even those 16 Drivers at this point of time would not be advisable.

8. Considering the peculiar facts and circumstances of the present case, in my view, ends of justice would meet if lumpsum compensation is awarded to the members of the Union/their heirs instead of reinstatement and/or backwages.

9. The next issue for consideration is the quantum of lumpsum compensation payable to the members of the Union. The Society is formed by the Ex-officers of Armed Forces. It is a Co-operative Society looking after essentially the welfare of the ex-defence personnel. It is not a profit making organization. The Society otherwise followed the norms of retrenchment by paying one month notice pay and retrenchment compensation to each of the 53 Drivers. Depending on the services put in by each one of them have received varied amounts towards retrenchment compensation and notice pay. Those who were, in longer services have received payments in the range of Rs.37,000/- to Rs.41,000/- whereas those with lesser years of services and who were engaged in the year 2003/2004 have received lesser amounts towards notice pay and retrenchment compensation. Their retrenchment is found to be illegal essentially on account of non-following of seniority list while retrenching their services. Considering these facts, in my mind, it would be appropriate

that lumpsum compensation of Rs.4,00,000/- is paid to each member of the Union towards full and final settlement. In respect of those members of the Union who have passed away, the compensation needs to be paid to their legal heirs.

10. Since the members of the Union are not held entitled for reinstatement and are instead being awarded lumpsum compensation, the prayer of the Union for payment of backwages in Writ Petition No.3940 of 2008 deserves to be rejected.

11. I accordingly proceed to pass the following order:

i) Award dated 21 January 2008 passed by Industrial Tribunal, Pune in Reference (IT) No.28 of 2005 is modified to the extent that the members of the Union shall be entitled to payment of lumpsum compensation in lieu of reinstatement and backwages.

ii) Each of the 53 members of the Union are held entitled to payment of lumpsum compensation of Rs.4,00,000/- towards full and final settlement of all their claims.

iii) The employer-Society shall pay to each member of the Union lumpsum compensation of Rs.4,00,000/- within a period of eight weeks by handing over cheques drawn in the name of each

individual member which shall be collected by the Union for being handed over to each of its members.

iv) In respect of those members of the Union, who have passed away, the Union shall communicate the employer-Society the names of their legal heirs within a period of four weeks in whose name cheque for compensation shall be drawn.

v) Beyond the lumpsum compensation so awarded, the members of the Union shall not be entitled to any further service related benefits from the employer-Society.

12. With the above directions, Writ Petition No.3440 of 2008 is **partly allowed** and Writ Petition No.3940 of 2008 is **dismissed**. Rule is made partly absolute in Writ Petition No.3440 of 2008 and Rule is discharged in Writ Petition No.3940 of 2008. There shall be no order as to costs.

13. In view of disposal of both the Writ Petitions, nothing would survive in Interim Application No.12758 of 2024 and the same also accordingly **disposed of**.

(SANDEEP V. MARNE, J.)

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