



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

Writ Petition No.2689/2024

Divisional Controller, State Transport, Buldhana V Pakash

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.R. Chhabra, Adv. for petitioner.
Mr. P. N. Verma, Adv for respondent.

CORAM : R.M. Joshi, J.

DATE : 30-06-2025.

This petition takes exception to the order dated 20-06-2023 passed by Industrial Court, Akola in Complaint ULP No.73/2012, wherein the challenge raised by the employee to the act of the Management-MSRTC of unilaterally reducing his pay scale is accepted by the Industrial Court and complaint came to be allowed.

2. There are certain facts which are not in dispute can be narrated in brief as under -

3. The respondent is a ex-serviceman who joined the services of MSRTC in the year 2002. He came to be appointed as a Driver. His pay was revised on 09-11-2009. Since the MSRTC realized that the said pay fixation has been done by mistake, it was unilaterally revoked by order impugned before the Industrial Court. Since there was no notice of change as contemplated by Section 9 of the Industrial Disputes Act and since the said order was not justified, it came to be challenged by filing ULP Complaint No.73/2012.

4. The MSRTC filed written statement contending that by mistake the pay fixation has been done and the same is rectified by the order impugned therein. Learned Industrial Court on the basis of evidence led on record and after hearing both the sides passed impugned judgment of allowing the complaint on 20-06-2023.

5. Learned Counsel for the petitioner-MSRTC submits that there is evidence to indicate that the pay fixation of the respondent has been done by mistake and therefore it was open for the employer to correct the said mistake. It is his submission that the said material evidence has not been taken into consideration by the Industrial Court and as such the order impugned cannot sustain.

6. Learned Counsel for the respondent supported the impugned order. It is his submission that the pay fixation cannot be reduced without giving notice of change under Section 9 of the Industrial Disputes Act. It is his contention that now the respondent has already retired from the service and as such there is no reason survives to cause interference in the impugned order.

7. There cannot be any dispute about the fact that the respondent is a ex-serviceman. He was entitled for the pay fixation as per his category in the employment on the establishment of the MSRTC. Even if for the sake of argument accepted it is that some mistake was committed by the MSRTC, it was incumbent on the part

of the employer to issue notice of change before affecting the service conditions of an employee adversely. Admittedly, no notice was issued before taking decision of reduction of his pay scale. Any change to the service condition which adversely affects an employee cannot be done without giving notice of change as contemplated by Section 9 of the I.D. Act. On the ground of non issuance of notice itself order impugned gets vitiated.

8. Apart from this, when the employer comes before the Court with a specific case about mistake having been committed in pay fixation, the duty is on the employer to prove that it occurred on account of mistake. As observed by the Industrial Court in paragraph 9 of the judgment impugned that, no evidence was led by MSRTC to substantiate this defence. There is no perversity in the appreciation of evidence on record and the findings so recorded on in consonance with facts proved on record.

9. In view of the above fact, it cannot be said that there is any perversity in fact or law in the impugned order. Hence, petition stands dismissed.

(R.M. Joshi, J.)