

**BEFORE SHRI. R.K. KHOMANE, MEMBER,**

**INDUSTRIAL COURT, AT MUMBAI**

**COMPLAINT (ULP) No. 92 OF 2022**

**[CNR NO : MHICO1-0000492-2022]**

1. Shri Abhay Vijay Naik.

2. Shri Pramod Shriram Pujare.

3. Shri Harischandra Tukaram Dhumal.

4. Shri Ankush Bhikaji Joshi.

All C/o. Harischandra Tukaram Dhumal,  
R.No.69, Nagdevi Nagar Welfare Society,  
Military Camp, Old Airport Gate No.8,  
Santacruz(E),Mumbai-400 055.

... Complainants.

Versus

1. The Indian Pharmaceutical Association,  
Maharashtra State Branch,  
Kalina, Santacruz(East),  
Mumbai-400 098.

2. Bombay College of Pharmacy,  
Kalina, Santacruz(East),  
Mumbai-400 098.

3. Dr. Krishna Iyer,  
Incharge Principal,  
Bombay College of Pharmacy,  
Kalina, Santacruz(East),  
Mumbai-400 098.

... Respondents.

**Coram:-** Shri R.K. Khomane, Member.

**Appearances:-**Shri B.K. Hegde, Ld. Advocate  
for the Complainant.  
Shri Mahesh Shukla, Ld. Advocate  
for the Respondents.

**ORDER (BELOW EXH.U-2)**  
**( 24.10.2024 )**

**01.** This is an application filed by the Complainants seeking interim relief, as prayed for.

**02.** According to the Complainants, they are in the employment of the Respondents since 16-26 years. However, they are treated as temporaries, though they were confirmed in the employment, with the object of depriving them the status, salary and benefits at par with the employees on the roll. The Complainants received appointment letters years after they joined the service. The Respondents also issued confirmation letters to the Complainants and they were drawing salary and benefits as applicable to employees on aided grade. However, without any intimation, the wage structure was altered and started treating the Complainants as temporary employees.

**03.** The Complainants contended that in the appointment letter dated 20.06.2010, the Respondents imposed 18 conditions, out of which the condition at Sr.No.10 is ultra-virus. The ban imposed from joining a trade union of his choice is illegal. The Respondents are

threatening that in case the Complainants challenge any of the action of the Respondents, they would invoke the clause and terminate their services. Hence, they are praying to struck off this condition from the appointment letters.

**04.** The Complainants contended that the employees are entitled to draw wages and benefits as per the scales, rules and regulations stipulated by the Pay Commissions. The aided employees are drawing wages and benefits currently as per the 7<sup>th</sup> Pay Commission. However, the Respondents are circumventing the binding provisions of the Pay Commission and the Government Resolutions and depriving wages, perquisite and benefits to the Complainants as un-aided employees/ temporary employees. Some of the teaching staff though un-aided are getting wages and benefits as per the 7<sup>th</sup> Pay Commission. The Respondents started paying the aided employees as per the 7<sup>th</sup> Pay Commission in the month of November 2019 and unaided management teaching staff are getting pay scale and other benefits at par with the aided teaching staff w.e.f. January 2022. However, the Complainants, though discharging permanent and perennial nature of work are deprived the

arrears of wages and status of permanent employees. This denial of wages at par with the aided employees to the Complainants amounts to discrimination regardless of merits and thus is an unfair labour practice under items 5, 6 and 9 of Sch.IV of the Act.

**05.** Complainants contended that there are 30 sanctioned posts of non-teaching staff in the Respondent No.2 College, out of which 17 posts are treated as vacant. Complainant No.1 is working as Store Keeper on vacant post. Complainant No.2 was designated as Office-Assistant working as Typist from the year 2013. Respondent Nos.2 and 3 are working on vacant posts. Respondent No.4 is a special abled person, working as Mali. The College is getting aid from the government for payment of wages to teaching as well as non-teaching staff. Complainants are not allowed to enjoy leave with wages, annual increments and all other benefits. Without knowledge of the Complainants, the Respondents arbitrarily changed the terms and conditions of employment. The Complainants are entitled to enjoy all types of leave, salary, perquisites, arrears, dearness allowances at par with the aided employees on the roll of the

Respondents on the principle of “equal wage for equal work”, Pay Commission Rules and Regulations. It is the contention of the Complainants, that the Respondents also changed the wage structure by merging dearness allowances and other allowances. Leave policy is changed without giving a notice of change. As per the appointment letters, the Complainants were getting 8 days casual leave, 10 days sick leave and 30 days leave with wages per annum. However, by unsigned circular dated 01.01.2019, the Respondents arbitrarily changed the leave policy and reduced the number of days of leave putting the condition that the Complainants will get one day’s leave with wages for every 20 days of work and also reduced the sick leave. The Complainants protested this arbitrary and illegal action by writing letter dated 09.12.2021.

**06.** It is the claim of the Complainants that they are entitled to time bound promotions on completion of 10 years, 20 years and 30 years of service, but the Respondents deprived the same to the Complainants. The Respondents after lifting of lock down in the month of January 2022, paid the wages and benefits to the management teaching staff

(unaided) at the rate of 7<sup>th</sup> Pay Commission, but the Complainants were not given the same. The Complainants are entitled to the said arrears of wages. Complainant No.1 claimed that he is entitled to grade pay of Rs.2800/- per month, Complainant Nos.2 and 3 are entitled to grade pay of Rs.1900/- and Complainant No.4 is entitled to grade pay of Rs.1300/- per month. Lastly, the Complainants pleaded that since they have filed the present Complaint, they apprehend that the Respondents may terminate their services to stultify the Complaint and deprive the statutory benefits to the Complainants. As such, it is the contention of the Complainants that the Respondents have engaged in unfair labour practice under items 5, 6 and 9 of Sch.IV of the MRTU & PULP Act. Hence, the Complainants prayed for declaration of unfair labour practice on the part of the Respondents. Further prayed to hold and declare that the Complainants are permanent employees of the Respondents and entitled to draw wages, benefits, leave with wages as applicable to the permanent aided non-teaching staff in their respective grades and accordingly pay the same with arrears @ 10%.

**07.** In the Application for Interim Relief, the

Complainants have prayed to restrain the Respondents from dismissing, discharging or otherwise terminating the services of the Complainants without following due process of law and by way of victimization. Another prayer is for direction to the Respondents to pay wages, benefits, including leave with wages, as per the terms and conditions stipulated in the appointment letters issued to the Complainants.

**08.** Upon notice, Respondents appeared and filed their affidavit-in-reply to the Interim Relief Application at Exhibit C-4. It is the contention of the Respondents that they have not committed or engaged in any unfair labour practice alleged in the present Complaint. The Complainants are confirmed in the employment of the Respondent No.2 and they are enjoying all the benefits applicable to them. Respondent Nos.1 and 3 are unnecessarily made parties and there is no averment against them. Hence, they be deleted.

**09.** Respondents denied that the Complainants have been appointed against any vacant post. For the appointment of candidate against the vacant post, approval of the State Government is required and recruitment process is to be done as per the guidelines prescribed by the

government. The appointment of the Complainants is not at as per the procedure laid down. Backdoor entry cannot be entertained. The entire Complaint is silent as to on which date the cause of action has arisen. There is no whisper as regards to ground and cause of apprehension. The Complaint lacks compliance of Regulation 100 of the Industrial Court Regulations, 1975.

**10.** Respondents denied that the Complainants are treated as temporary. The Complainants have been issued appointment letters. The principle of equal work and equal pay shall not apply. No prima facie case is made out. Balance of convenience do not lie in favour of the Complainants. Hence, prayed to reject the application.

**11.** Having regard to the submissions made on behalf of the parties, the following points arise for my determination. My findings thereon with reasons are as follows:-

<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1) Whether there is a prima facie case in favour of the Complainants?	Partly in the affirmative.
2) Whether the balance of convenience lies in favour of the Complainants?	Partly in the affirmative.

3) Whether irreparable loss would be caused to the Complainants, if the interim reliefs, as prayed for, are not granted?	Partly in the affirmative.
4) What Order?	As per the final Order.

### **REASONS**

#### **AS TO POINTS NO.1 TO 3:-**

**12.** Before adverting to the merit of the application, it is to be noted that it is a settled principle of law that there are some parameters to grant the interim relief i.e. as to (i) whether the Complainants have made out a strong prima facie case, (ii) whether the balance of convenience lie in their favour and (iii) whether the Complainants would suffer irreparable loss, if interim relief is not granted in their favour.

**13.** The Complainants have filed some documents alongwith list Exhibit U-4, which comprise of-

- (i) Chart showing number of posts, vacant posts of non-teaching staff.
- (ii) Grades as per the direction given by the Pay Commission.
- (iii) Chart showing monthly pay, DA, HRA, CLA, TA required to be paid during the period from January 2016 to June 2022.

(iv) Copies of appointment letter dated 20.06.2010, confirmation letter dated 01.07.2014 and pay slip for the months of July 2010, September 2014 and April 2019 issued to the Complainant No.1.

(v) Copy of appointment letter issued to Complainant No.2.

(vi) Copies of appointment letter dated 20.06.2010, confirmation letter dated 01.07.2014 issued to the Complainant No.3.

(vii) Copy of disability certificate dated 31.12.1991 of Complainant No.3.

(viii) Copies of appointment letter dated 20.06.2010, confirmation letter dated 01.07.2014 issued to the Complainant No.4.

(ix) Altered leave policy of the Respondents dated 01.01.2019.

(x) Government Circular dated 16.09.2019.

(xi) Copy of chart showing wages and allowances to be paid as per 7<sup>th</sup> Pay Commission respectively to the Complainant Nos.1 and 2.

(xii) Copies of letters dated 29.11.2011, 19.12.2019 and

09.12.2021 addressed by the Complainants to the Respondents.

(xiii) Chart showing encashment of leave to the credit of the Complainants.

(xiv) Salary of Complainant No.1 for the month of December 2019.

**Submissions:-**

**14.** Ld. Advocate Shri B.K. Hegde for the Complainants submitted that the Complainants have been issued appointment letters as well as confirmation letters. However, without any intimation, the Respondents started treating the Complainants as temporary employees. He then drew the attention of this Court to the conditions which have been laid down in the appointment letters dated 20.06.2010, more particularly Clause No. 10 which restrains the Complainants from joining a trade union. Ld. Advocate then urged that the Respondents are depriving the Complainants their wages, perquisites and benefits as per the 7<sup>th</sup> Pay Commission. All the employees are paid the arrears of wages, salary and other benefits as per the 7<sup>th</sup> Pay Commission in the month of November/December 2019, but

the same are denied to the Complainants.

**15.** Ld. Advocate Shri Hegde submits that the leave policy has also been arbitrarily changed. The service conditions of the Complainants are altered. No notice of change u/s. 9-A of the I.D. Act is given. Complainants protested against the said illegal action, but the Respondents have not responded to the same. The principles of equal pay for equal work are grossly violated. There is gross discrimination. Strong prima facie case has been made out by the Complainants. Balance of convenience lies in favour of the Complainants. Grave prejudice would be caused to the Complainants, if the interim reliefs, as prayed for, are not granted. Accordingly, he prayed for granting the reliefs sought in the present application.

**16.** In rebuttal, Ld. Advocate Shri Mahesh Shukla, on behalf of the Respondents, reiterated the averments made in the affidavit-in-reply. He urged that there are no specific averments which would attribute to indulgence of unfair labour practice by the Respondents. The averments made are vague and not supported with any documentary evidence. The Complainants are issued with appointment

letters and confirmation letters. While touching the merits of the matter, he urged that backdoor entry is not permitted. The Respondents have to follow the procedure, as prescribed by the Government Circulars from time to time. He vehemently denied that the Respondents have engaged in any sort of unfair labour practice. For seeking an interim relief, the Complainants are required to make out a strong prima facie case and also the balance of convenience. If at all the Court reaches to a prima facie finding that no unfair labour practice is indulged by the employer, then the interim reliefs should not be granted. Thus, the Complainants are not entitled for any relief and hence prayed for rejection of the application.

**17.** Looking to the entire controversy, it can be gathered that the Complainants are praying for declaring that they are permanent employees of the Respondents and hence entitled to draw wages, benefits, leave with wages as applicable to the permanent non-teaching staff in their respective grades. The Complainants have made a reference of leave policy, which according to them is issued illegally to their prejudice. The Complainants are alleging that they have

not been paid the salary, arrears, benefits arising out of the 7<sup>th</sup> Pay Commission. The entitlement of the Complainants to all such benefits, as claimed, would depend solely on the final adjudication of the matter. The Complainants, in order to prove their claim, are required to adduce cogent oral and documentary evidence.

**18.** Now turning to the interim reliefs sought by the Complainants, one of the relief sought is protection of employment of the Complainants. There is an averment in the Complaint that on account of filing of this Complaint, the Complainants apprehend that the Respondents may terminate their services without following due process of law. Admittedly, the Complainants are the employees of the Respondents. Hence, considering the apprehension of the Complainants, their services can be protected at this interim stage.

**19.** The second interim relief sought is direction to the Respondents to pay wages, benefits, including leave with wages, as per the terms and conditions stipulated in the appointment letters. As stated above, entitlement of the Complainants to such benefits, wages as sought by the

Complainants would depend upon the outcome of the final adjudication on merits. At this prima facie stage, such sort of monetary reliefs cannot be granted. Even otherwise, grant of such interim relief would amount to grant of final relief. Hence, I am not inclined to grant this relief at the interim stage. Hence, I answer Point Nos.1 to 3 in **partly affirmative** and in answer to Point No.4, I proceed to pass the following Order:-

**ORDER**

- i) Application for Interim Relief at Exhibit U-2 is hereby partly allowed.*
- ii) Pending the hearing and final disposal of this Complaint, the Respondents are restrained from dismissing, discharging or otherwise terminating the services of the Complainants without following the due process of law.*
- iii) No order as to cost.*

*Date:- 24.10.2024.*

*(R.K. KHOMANE)  
Member,  
Industrial Court, Mumbai.*

Skn/-