

MHLC240007422019

Presented on : 21.12.2019
Registered on : 21.12.2019
Decided on : 01.07.2022
Duration : 02 Y, 06 M, 10 D

BEFORE THE PRESIDING OFFICER FOR INDUSTRIAL DISPUTES
ACT AND JUDGE, LABOUR COURT, LATUR
(Presided Over by Madhura A. Mulik)

IDA No. 125/2019
Exh. No. O-4

Smt. Khatunbee Ilahi Tamboli
Age : 57 Yrs, Occu. : Service
(as Rojandari Sevika in Municipal
Council School, Osmanabad)
R/o. : City Point Hotel,
Sanja Road, Osmanabad
Tq & Dist. Osmanabad.

....APPLICANT

// Versus //

- 1) The Chief Officer,
Municipal Council, Osmanabad
R/o. Osmanabad
Tq. & Dist. Osmanabad.
- 2) The Director/Commissioner,
The Directorate of
Municipal Council Administration
Shaskiya Parivahan Seva Imarat,
Third Floor, Sir Pochkhanwala Road,
Worli, Mumbai.

....NON APPLICANTS

CLAIM :- Application under Sec. 33-C (2) of Industrial Disputes Act, 1947.

APPEARANCE :- Shri. D. P. Marathe, Ld. Advocate for Applicant
Shri. P. A. Jagdale, Ld. Advocate for Non
applicant No. 1
Non applicant No. 2 – Ex parte

EX-PARTE JUDGMENT
(Delivered on 01/07/2022)

The present application is filed by the applicant under Sec. 33-C (2) of the Industrial Disputes Act claiming amount of Rs. 14,26,382/- towards arrears of wages for the period from 29.09.2011 to 30.09.2019 and from 01.10.2019 onwards along with interest @ 12% per annum from the non applicants.

BRIEF FACTS OF THE CASE :

02) It is submitted by the applicant that, initially She was appointed as Rojandari Sevika in the Municipal Council School at Osmanabad on 06.02.1986. Her past service record is clean and unblemished. Since the applicant has completed more than 240 days service in a calendar year, she was entitled to get benefits of permanency. The Municipal Council has not issued orders to that effect and deprived her from the benefits of permanency. Therefore, the applicant along with other 20 employees had filed Com. ULP No. 144/2011 before the Hon'ble Industrial Court, Latur. The Hon'ble Industrial Court vide it's Judgment dtd. 02.05.2012 directed the non applicant No. 1 to confirm the status of

permanency on the applicant from the date of filing of the complaint and shall give all consequential benefits as per their respective posts to each complainant within a period of 06 months from the date of the order.

03) It is submitted that, against the said Judgment and Order passed by the Hon'ble Industrial Court dtd. 02.05.2012 the non applicant Municipal Council, Osmanabad had preferred W.P. No. 5091/2014 before the Hon'ble High Court, Bench at Aurangabad. In said writ petition the Hon'ble High Court on 01.10.2014 modified the order passed by the Hon'ble Industrial Court and directed the petitioner i.e. original non applicant to submit the proposal of the non applicants i.e. original complainants for regularization and incidental and consequential benefits thereto, along with the copy of the Judgment of the Industrial Court dtd. 02.05.2012 to the Divisional Commissioner, Aurangabad who is the Regional Director of Municipal Administrator, within a period of 04 weeks from the date of the order.

04) It is submitted that, being aggrieved with order passed by the Hon'ble High Court the non applicants had filed Civil Appeal No. 8022/2016 before the Hon'ble Supreme Court and the said Civil Application is came to be dismissed on 31.08.2017. Though the order passed by the Hon'ble Industrial Court in respect of service of the applicant stands confirmed still the non applicants have not taken any steps to implement the Judgment and Order passed by the Hon'ble Industrial Court. The non applicants have not implemented the order passed by the Hon'ble Industrial Court

& Hon'ble High Court within stipulated time therefore, the applicant and other employees have filed contempt proceeding against the non applicants before this Court and same is still pending.

05) It is submitted that, since last 09 years the applicant is deprived from benefits of permanency intentionally disobeying the order passed by the Industrial Court and the Hon'ble High Court. Therefore, the applicant is constrained to file present application. As per the orders passed by the Hon'ble Industrial Court and the Hon'ble High Court, the applicant is entitled to the permanency and all consequential benefits from 26.09.2011. The basic pay of the post of Sevika/Peon in Municipal Council is Rs. 4,440/- - 7440/- (Grade pay Rs. 1300). Accordingly the total amount of arrears of wages from 26.09.2011 to 30.09.2019 comes to Rs. 14,26,382/-. The non applicants are liable to pay said amount to the applicant along with interest @ 12% per annum. Further the non applicants are also liable to pay the arrears of wages with interest from 01.10.2019 onwards to the applicant. Therefore, it is prayed to direct the non applicants to pay the amount of back wages of Rs. 14,26,382/- along with interest @ 12% per annum to the applicant and arrears of wages with interest and arrears of wages from 01.10.2019 onwards.

06) The non applicant No. 1 appeared in present matter but failed to file written statement, hence matter proceeded without it's written statement vide order dtd. 28.08.2021 passed below Exh. U-1

07) The non applicant No. 2 failed to appear in present matter though duly served with notice, hence matter proceeded ex parte against it vide order dtd. 28.08.2021 passed below Exh. U-1.

08) Considering pleading of the applicant, following points arise for determination. I have recorded my findings on these points for the reasons mentioned thereof:

Sr. No.	POINTS	FINDINGS
01.	Whether the applicant is entitled to get amount of Rs. 14,26,382/- towards arrears of back wages from the non applicants along with interest @ 12% per annum as prayed ?	Partly in affirmative
02.	What order ?	As per final order.

REASONS

09) The applicant in support of her contentions examined herself vide **Exh. U-10**.

In addition to that, she has filed copy of Judgment and Order dtd. 02.05.2012 passed by the Hon'ble Industrial Court in Com. ULP No. 144/2011 at **Exh. U-11**, copy of order dtd. 01.10.2014 passed by the Hon'ble High Court, Bench at Aurangabad in W.P. No. 5091/2014 at **Exh. U-12**, copy of order dtd. 31.08.2017 passed by the Hon'ble Supreme Court in C.A. No. 8022/2016 at **Exh. U-13**, copy of letter dtd. 05.01.2016 issued by

Regional Director, Municipal Council Administration, Aurangabad at **Exh. U-14**, copy of letter dtd. 02.01.1999 addressed to the Collector by Chief Officer, Nagar Parishad, Osmanabad with Annexure 'A' at **Exh. U-15**, copy of chart showing the calculation of back wages as per pay scale to which the applicant is entitled at **Exh. U-16**.

Heard Ld. Advocate for the applicant. Perused entire record.

As to Point No. 1 :-

10) It is contended by the applicant that, she was appointed as Rojandari Sevika on 06.02.1996 in Municipal Council School at Osmanabad. Since then she is in continuous service of Municipal Council School. She has continuously rendered her services inspite of that, benefits of permanency was not granted to her. Admittedly the applicant along with other daily wagers have filed Com. ULP No. 144/2011 before the Hon'ble Industrial Court, Latur. The copy of Judgment dtd. 02.05.2012 passed in said complaint is at **Exh U-11**. The Hon'ble Industrial Court pleased to direct non applicant No. 1 to confirm the status of permanency on the applicant from the date of filing the complaint and shall give all the consequential benefits as per their respective post to each complainant within a period of 06 months from the date of the order.

11) Being aggrieved with said order, the Municipal Council, Osmanabad through it's Chief Officer have filed W.P. No.

5091/2014 before the Hon'ble Bombay High Court, Bench at Aurangabad. The Hon'ble High Court vide Judgment dtd. 01.10.2014 pleased to direct the non applicant to submit the proposals of respondent i.e. present applicant for regularization and for incidental and consequential benefits. The copy of said order is at **Exh. U-12**. It is further directed that, the non applicant Municipal Council, Osmanabad shall not alter the service conditions of the respondents i.e. present applicant and other employees or terminate them only on account of the pendency of their proposal.

12) The non applicant Municipal Council, Osmanabad has challenged the order passed by the Hon'ble Industrial Court, Latur by filing C.A. No. 8021/2016 before the Hon'ble Supreme Court, the said appeal came to be dismissed vide order dtd. 31.08.2017. The copy of order of the Hon'ble Supreme Court dtd. 31.08.2017 is at **Exh. U-13**.

13) The applicant by filing present application U/S 33-C (2) of the Industrial Disputes Act, 1947 claimed the arrears of wages from 26.09.2011 to 30.06.2020 i.e. till the date of retirement. It is argued for the applicant that, till the date of retirement the applicant was kept in services as daily wager and meager amount towards wages has been paid to her. It is clear that, there is specific order of the Hon'ble Industrial Court to confirm status of permanency on the applicant from the date of filing of Com. ULP No. 144/2011 and give all consequential benefits to the applicant.

Thus, the applicant has pre-existing right to get the amount as claimed by her.

14) Record shows that, though the non applicant No. 1 appeared in present matter has not filed its written statement. Moreover, the non applicant No. 2 though duly served with notice remained absent in present matter. The applicant re-iterated her contentions in her evidence at **Exh. U-10**. As she is not cross examined on behalf of the non applicants, her contentions remained un-rebutted and unchallenged.

15) It is seen that, the applicant never pleaded or deposed about actual amount of wages received by her during period from the date of order of Hon'ble Industrial Court, Latur till the date. She has filed one chart at **Exh. U-16** showing the calculation of wages as per pay scale for which she is entitled. The Ld. Advocate for the applicant submitted that, the pay scale for the post of Sevika/Peon in Municipal Council is Rs. 4,440/- - 7,440/- and grade pay of Rs. 1,300/-. It is seen that, on the basis of this pay scale the applicant has prepared the chart **Exh. U-16**. As the non applicants have not challenged this chart by remaining present in this proceeding and by cross examining the applicant, the chart of calculation filed by the applicant is acceptable. It is argued for the applicant that, on 30.06.2020 she has attained age of superannuation and at the fag end of matter, the applicant has filed pursis **Exh. U-18** and submitted that, from 09.09.2011 to 31.12.2019 she has received total amount of Rs. 3,52,000/- towards wages. Considering all these facts, it is clear that though

the applicant has claimed amount of Rs. 14,26,382/- she is entitled to get amount of Rs. 10,74,382/- towards arrears of wages after deducting the actual amount received by her. The applicant has claimed interest @ 12% per annum on claimed amount, but as there is no provision to grant interest on claimed amount under Sec. 33-C (2) of the Industrial Disputes Act, she is not entitled for the same. The applicant is also entitled to get arrears of wages from 01.10.2019 to 30.06.2020 i.e. till the date of retirement. Thus, I answer Point No. 1 partly in the affirmative and in answer to Point No. 2, I proceed to pass following order:

ORDER

- 1) Application is partly allowed.
- 2) The non applicants shall pay amount of Rs. 10,74,382/- towards arrears of wages to the applicant.
- 3) The office of this Court is hereby directed that, the decision of this Court shall be forwarded to the Appropriate Government.
- 4) No order as to cost.

Date : 01/07/2022

Place : Latur

MAK /...

(Madhura A. Mulik)
Presiding Officer for I.D. Act &
Judge, Labour Court, Latur.

Argued on : 24/06/2022

Judgment dictated on : 01/07/2022

Judgment transcribed on : Directly dictated on computer, hence no transcription.

Judgment checked & : 02/07/2022

signed on