



Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 79 OF 2015

The Principal, Modern College of Arts,
Science and Commerce, Shivaji Nagar,
Pune- 5

... **Petitioner**

V/s.

Vineeta Dass
Room No. 356/14, Ahire Gate, Shivne,
Pune -23. Now R/o Flat NO. 18, B – Wing,
Ashirwad Garden Society,
Near Ashirwad Hall, Shivne, NDA Road,
Pune - 23

... **Respondent**

SAYALI
DEEPAK
UPASANI

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Mr. S. R. Nargolkar, i/b Mr. Aumkar Joshi, for
Petitioner.

Mr. Kalika Shankar Verma, for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 23, 2026

PRONOUNCED ON : APRIL 30, 2026

JUDGMENT:

1. By the present petition preferred under Articles 226 and 227 of the Constitution of India, the petitioners have assailed the legality, propriety, and correctness of the judgment and order dated 19 November 2014 passed by the learned Member, Industrial Court, Pune in Complaint (ULP) No. 202 of 2009. By the



said judgment, the petitioner institution has been held guilty of engaging in unfair labour practice under Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, and has further been directed to cease and desist from continuing such unfair labour practices.

2. The facts giving rise to the present proceedings, stated in brief, are that the petitioners have approached this Court seeking quashing and setting aside of the aforesaid order dated 19 November 2014. The respondent claimed that she was an employee within the meaning of Section 3(5) of the said Act and also a workman under Section 2(s) of the Industrial Disputes Act, 1947. It was her case that she had been working with the petitioner institution since the year 2005 and was being paid monthly wages of Rs.3,800/-. According to the respondent, the prescribed minimum salary payable to a Clerk and Lab Assistant was Rs.8,200/- and Rs.8,500/- per month respectively. It was further alleged that when a permanent vacancy to the post of Lab Assistant/Junior Clerk in the General Category arose in the year 2007, the respondent had applied and was called for interview, yet she was not selected. It was also contended that when another permanent vacancy for the post of Junior Library Clerk/Lab Attendant arose in August 2009 in the General Category, though the respondent had submitted her application, she was not even called for interview. On the basis of the aforesaid allegations, the respondent filed the complaint seeking a declaration that the petitioners had indulged in unfair labour practices under Items 5,



6, 9 and 10 of Schedule IV of the said Act. The respondent further prayed for a direction restraining the petitioners from continuing such practices, for payment of salary in the prescribed pay scale with effect from September 2005, for consideration of her claim for appointment or promotion to the post of Junior Lab Clerk, and for her appointment or promotion to the post sought to be filled by fresh recruitment.

3. The petitioners appeared before the Industrial Court and filed their written statement resisting the complaint by specifically denying all allegations and contentions raised by the respondent. A preliminary objection was taken regarding maintainability of the complaint. It was contended that the respondent was neither an employee nor a workman within the meaning of the relevant enactments and that the Model Standing Orders had no application to her service conditions. It was further contended that the petitioner institution was governed by the provisions of the University Act, 1994, and the service conditions of employees were regulated by the Standard Code framed thereunder. According to the petitioners, any grievance arising between employer and employee was required to be agitated before the special forum provided under the said statute, and therefore the Industrial Court lacked jurisdiction to entertain and decide the complaint. It was also the case of the petitioners that certain courses conducted by the institution were aided and received governmental grants, whereas some courses were unaided and run without financial assistance from the State. Consequently, posts recognised and sanctioned by the Government were paid salary in accordance with



governmental norms, while employees working on non-sanctioned and non grant posts were paid wages as per the general law and contractual arrangement.

4. The petitioners further contended that the respondent had throughout worked as an assistant in the Biotechnology Department, which was a non grant unit, and therefore she could not claim parity with employees serving on aided posts. It was additionally urged that the petitioner institution did not constitute an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The allegation of favouritism, discrimination or partial treatment to any class of employees irrespective of merit was specifically denied. It was also asserted that the respondent was not entitled to claim salary in the range of Rs. 8,000/- to Rs. 9,000/- per month from the date of her initial engagement. On these grounds, the petitioners prayed for a declaration that no unfair labour practice had been committed by them and that the complaint deserved dismissal.

5. Upon hearing the parties, the learned Member, Industrial Court, Pune partly allowed Complaint (ULP) No. 202 of 2009 by judgment and order dated 19 November 2014. By the said decision, the Industrial Court recorded a finding that the petitioners had engaged in unfair labour practice under Item 5 of Schedule IV of the Act. The petitioners were accordingly directed to cease and desist from continuing the said unfair labour practice. The Industrial Court further directed the petitioners to pay to the respondent salary in the pay scale applicable to Junior Clerks in aided colleges, as prescribed under the Standard Code and/or as



sanctioned by the State Government from time to time, from the date of her initial appointment and to continue payment of salary in the said scale thereafter. The petitioners were also directed to pay arrears of salary within a period of three months from the date of the judgment. Being aggrieved by the aforesaid findings and directions, the petitioners have instituted the present writ petition seeking interference with the impugned order.

6. Mr. S.R. Nargolkar, learned counsel appearing on behalf of the petitioners, invited attention of this Court to the pleadings contained in the complaint and submitted that though the entire case of the respondent is professedly founded upon Item 5 of Schedule IV of the MRTU and PULP Act, the complaint is wholly deficient in material particulars. According to him, neither the names of allegedly comparable employees, nor the nature of duties discharged by them, nor particulars showing similarity of work have been pleaded. Referring to Item 5 of Schedule IV, learned counsel submitted that a mere allegation of favouritism or partiality is insufficient in law unless it is specifically pleaded and established that such favouritism or partiality was exercised regardless of merit. It was further submitted that the respondent possessed only the educational qualification of Second Year B.Com., and had not completed graduation and, therefore, was not eligible for appointment to any regular post in the petitioner institution. Learned counsel further pointed out that in her cross-examination, the respondent admitted that the salary paid to other staff members was the same. He also relied upon the statement of the petitioner in examination in chief that no sanctioned post of



Clerk-cum-Lab Assistant was in existence. It was then urged that the Standard Code, on which heavy reliance has been placed by the respondent, would apply only to a person duly appointed on a permanent post. Inviting attention to Section 57 of the Maharashtra Universities Act, learned counsel submitted that the respondent had an efficacious alternate remedy before the Grievance Committee in respect of disputes not covered by Section 59 of the said Act, and recommendations of such Committee, subject to decision of the Management Council, are binding in nature.

7. Learned counsel then invited attention to the impugned judgment and submitted that while deciding Issue No. 2, namely whether the respondent was entitled to appointment or promotion to the post of Junior Lab Assistant or Clerk, the Industrial Court itself recorded a finding in the negative. According to him, once such finding was returned, it was legally impermissible for the Industrial Court to thereafter hold that the respondent was entitled to the pay scale prescribed under the Standard Code of 1984. It was submitted that the two findings are mutually inconsistent and incapable of co existence. Learned counsel sought to distinguish the judgment of this Court in *Raskar Vidya Damodar @ Bhujbal Vidya v. Maharashtra Arogyamandal and Others*, reported in 2001 (2) Bom.C.R. 284, by contending that in the said case the employee concerned was governed by the provisions of the MEPS Act and had been appointed against a permanent post, and it was in that factual background that parity of pay scale was recognized.



Act, 1947. It was further contended that the petitioner institution is a reputed educational college and falls within the ambit of an industry for purposes of the aforesaid enactments. Learned counsel submitted that the petitioner employs more than one hundred persons, of whom about thirty-five hold the posts of Junior or Senior Clerk and about ten hold the posts of Lab Assistant. He contended that while the minimum salary payable to Clerks and Lab Assistants ranges between Rs.8,200/- and Rs.8,500/- per month, the respondent was intentionally paid only a meagre amount. According to him, the petitioners deliberately continued the respondent as a temporary employee for years together with the object of depriving her of permanency and attendant benefits, despite completion of the requisite period contemplated under the Model Standing Orders, namely 240 days of continuous service and the applicable probationary tenure.

10. Learned counsel further submitted that persons junior to the respondent, though performing similar duties, were drawing monthly salary in the range of Rs.8,000/- to Rs.9,000/-, whereas the respondent was continued on substantially lesser wages. He pointed out that at the commencement of service she was paid only Rs.3,000/- per month. According to him, this itself demonstrates favouritism towards one set of employees regardless of merit and constitutes unfair labour practice. He further submitted that the principle of equal pay for equal work has also been violated. Referring to the evidence on record, learned counsel submitted that the college is affiliated to the then Pune University and courses are conducted as per the syllabus prescribed by the



15. In present matter, the respondent has alleged that proper wages were denied to her and that junior persons were receiving higher salary. Such grievance by itself cannot be brushed aside. However, when the Court examines pleadings, it finds absence of exact particulars. The names of alleged junior employees are not set out in the complaint. Their mode of appointment, whether aided or unaided cadre, whether permanent or temporary, and what duties they were discharging, are also not stated. In matters concerning discrimination, if comparison itself is vague, adjudication becomes uncertain. A Court cannot proceed on assumption where statutory ingredients require proof.

16. Pleadings in such cases are the foundation on which evidence is placed. If the foundation is absent, evidence cannot cure the defect. The employer must know what case is to be met. Otherwise, cross-examination and explanation become difficult. For this reason, the petitioner was justified in contending that the complaint suffered from want of particulars. It is no answer to say that during evidence a statement was made that some staff members were receiving more salary or that respondent was doing clerical and laboratory work. Such assertions cannot substitute pleadings.

17. The next aspect concerns status of respondent and nature of her engagement. Respondent has described herself as Clerk-cum-Lab Assistant and asserted continuous work from August 2005. Continuity of service is one fact. But continuity alone does not settle the character of appointment. The petitioner has disputed that respondent was ever appointed on a permanent, sanctioned,



laboratory, and assisted students during practicals. These duties indicate useful service and mixed clerical assistance. Yet, equal pay claim is not decided merely because some duties overlap. The Court must see whether duties were same in responsibility, accountability and qualification requirement. A Junior Clerk in aided establishment may maintain records, registers, examination data, and confidential correspondence. A laboratory assistant in approved cadre may handle chemicals and technical assistance. Unless comparative evidence is brought, similarity in few tasks cannot establish identity of post.

20. Learned counsel for respondent submitted that juniors were receiving higher salary. Even assuming some persons junior in age or later in joining were receiving more, the Court must still ask why. They may have been selected through regular process. They may have occupied aided posts. They may have possessed different qualification or approval. Without these facts, comparison remains incomplete. The Industrial Court was therefore required to undertake scrutiny whether respondent and alleged comparators stood in same area. The record does not establish such parity. Consequently, finding of discrimination becomes unsustainable where comparative data is not available.

21. The respondent has also relied on circumstance that petitioner institution is large establishment, employs many staff members, is affiliated to Pune University, and therefore must follow norms. An affiliated institution remains subject to educational laws and labour laws. However, from this proposition one cannot jump to conclusion that every person working in



institution acquires right to aided scale.

22. The issue is whether respondent has shown a legal right to the exact scale claimed by her. On this crucial point, evidence falls short. It has not been shown that respondent was appointed through prescribed process on permanent post. It has not been shown that a post of Clerk-cum-Lab Assistant existed. On contrary, petitioner has stated that such post was not in existence. If that be so, direction to pay scale of Junior Clerk in aided college cannot be issued.

23. Another circumstance is the finding recorded by Industrial Court on Issue No. 2. That Court declined to hold that respondent was entitled to appointment or promotion to the post of Junior Lab Assistant or Clerk. This finding has serious bearing. If respondent was not found entitled to be appointed or promoted to that post, then direction granting pay scale of same category becomes difficult to reconcile. When post entitlement is denied, grant of identical scale without basis creates contradiction.

24. The reliance placed upon decision in *Raskar Vidya Damodar @ Bhujbal Vidya* also does not advance respondent's cause. Precedents apply through similarity of material facts. As pointed out by petitioner, that case arose in context where employee was governed by MEPS Act and held appointment on permanent post. In those facts, parity of pay scale may have been considered justified. Here, the nature of appointment itself is disputed, and sanctioned status is not proved. Thus, Industrial Court appears to have relied on said authority without noticing the factual



(v) In the facts and circumstances of the case, there shall be no order as to costs;

(vi) Pending interim applications, if any, do not survive and stand disposed of accordingly.

(AMIT BORKAR, J.)