

(1996) 09 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 2152 of 1990

Ramesh Ganpatrao Wankhede

APPELLANT

Vs

The Works Manager, Central Workshop, Maharashtra State,
Road Transport Corporation

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 35
Industrial Disputes Act, 1947 — Section 33
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 30(2)

Citation : (1998) 1 BomCR 752

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : P.T. Trivedi, for the Appellant; V.G. Wankhede, for the Respondent

Judgement

V.S. Sirpurkar, J.—The petitioner a Fire Warden working in the Maharashtra State Road Transport Corporation (hereinafter called "the Corporation" for the sake of brevity) is challenging the judgment by Industrial Court dismissing his complaint. By the said complaint, the petitioner had objected to the withdrawal of 20% of extra pay which was being given to him. The said pay was withdrawn by a communication dated 4-2-1988 and with effect from 1-2-1988. It was the case of the petitioner before the Industrial Court that the petitioner was duly selected for the post of Fire Warden. His appointment order is annexed herein and his appointing authority mentioned there is the Chief Personnel Officer.

2. The petitioner contended in his complaint that, to begin with he was posted in the Central Workshop, Dapoli at Pune where he continued upto 14-6-1986 when he was transferred to the Central Workshop, Nagpur. The main reliance of the petitioner in the complaint was on the order dated 7-6-1982 passed by the Assistant Workshop Superintendent who was probably acting for Works Manager then. In this order in paragraph 2 it is mentioned as below :-

"In view of the working for more hours he will get special pay of 20% of his basic salary in addition. This special pay shall not be more than Rs. 150/- per month."

The petitioner claims that right from the beginning of his tenure as a Fire Warden, he was being paid the special pay of 20% which pay was abruptly ceased by the respondent. Thus, according to the petitioner it was an unfair labour practice covered under Item No. 5 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The petitioner also relied upon the settlement and more particularly Item Nos. 41 & 81 which provided that the service conditions of the employees cannot be adversely affected. He also relied upon the settlement of 1981 wherein the employees were paid 20% of special pay for observing factory working hours and holidays. In support of his complaint, the petitioner filed the term of the settlement at Item No. 3 in Settlement dated 19-5-1973. The settlement is like this :-

"Special pay shall be paid uniformly at the rate 20% instead of the present rates of 15%/20% to (i) the clerical staff at Depots, Divisional Workshop and stores, Central workshops including Stores Assistants at C.W.D., who have to put in Factory hours of work and get factory holidays and (ii) Assistant Traffic Superintendents, Traffic Inspectors, Assistant Traffic Inspectors, Assistant Traffic Inspectors performing duties at the Depots/ Bus stands on 8 hours a day basis (iii) The allowance of Rs. 15/- paid presently to Assistant Traffic Inspectors who are allotted stationary duties at Depots, under Joint Committee Resolution 264 dated 18-2-65, shall be simultaneously discontinued."

The other settlement clause relied upon by the petitioner was Item No. 4(k) of the settlement dated 20-6-1963.

The settlement is as under :-

"Item 4(k) : The Time-keepers work shop clerks, clerical establishment of the workshops and stores should be paid a monthly allowance of 15% of the basic or Rs. 15/- when required by the Administration to put in hours of work like factory workers.

Settlement (k) : The Ministerial and Clerical staff and store keepers working at the depots, Divisional workshop, and Stores shall if required by the Administration in writing to observe the same hours of work and holidays as factory workers, be entitled from the date of registration of this Agreement and as long as they are as required to an allowance of Rs. 15/- or 15% of the basic pay, whichever is more."

In short, therefore, the case of the petitioner was that he was from the ministerial or clerical staff and he was required to observe the same hours of work and holidays as the factory workers, and, therefore, he was entitled to the 15% of the basic pay as the special pay. His further case is that since this 15% was raised to 20% later on, he was entitled to 20% of pay and, therefore, he

was rightly granted 20% of pay by the Works Manager of Central Workshop, Dapoli, Pune when he was posted. There his further contention is that this pay has to continue because he was transferred from Central Workshop Dapoli, Pune when he was posted there. His further contention is that this pay has to continue because he was transferred, Nagpur in the same capacity and, therefore, the Corporation could not have withdrawn or ceased this special pay and in doing so the Corporation had engaged itself in an unfair labour practice. An interim application was also made u/s 30(2) of the Act but it is an admitted position that no interim relief was granted.

3. The application came to be opposed. The case of the Corporation in defence was that the petitioner right from the beginning was not entitled to any such special pay. The Corporation pointed out that under the circular the duty hours of the Fire Warden were 8 hours a day and therefore, the complainant was not doing anything extra and, therefore, he was not entitled to the special pay of 20%. They claimed that the petitioner was not entitled to any special pay which was hitherto being paid to him. They claimed that an audit objection in that behalf was raised and, therefore, the case of the petitioner was verified and it was found that the petitioner was wrongly granted the special pay. They further claimed that the Personnel Department Circular No. 26/ 83 and more particularly category No. 53 there in does not entitle Fire Warden to a special pay while it spells out a duty of eight hours to a Fire Warden.

4. Evidence was led before the Court wherein the petitioner examined himself in support of his case and claimed that he was getting the 20% of the special pay right from the beginning of his service and the say pay was discontinued. He again relied on settlement No. 7 of settlement dated 1-1-1981 proved at, Exh. 25, so also he relied upon subject Nos. 41 & 81 of the settlement dated 25-4-1956 which have been referred to earlier in this judgment. He also relied upon weekly diary maintained by his predecessor. He admitted the circular filed by the respondent dated 5-12-1983. He claimed and asserted that he belonged to the administrative staff and was, therefore, entitled to the special pay. He also relied upon Item No. 32-A & B dated 27-6-1961 as also the extract of clause 2 of part IV in settlement dated 1-8-1981 and 19-12-1985. In his cross-examination, a clear-cut suggestion has been made to him that he did not belong to the administrative staff which he denied. He was also specifically asked about the working hours and he had to admit that the normal working hours in Nagpur Central Workshop are eight hours but he asserted that the workmen like him were required to put in only 6 1/2 hours. In support of its defence, one officer of the Corporation namely, one Arvind Bhalchandra Kunte was examined who asserted that the duty hours of the Fire Warden are for 8 hours. He also pointed out that except the complainant no other employees working in the security establishment got 20% allowance on account of his working more than 6 1/2 hours duty. He very clearly asserted that the petitioner workman did not come under the clerical cadre. He pointed out that administrative and security wings are two different wings. There is hardly any cross-examination worth the name

of this witness. He asserted in paragraph 3 of his cross-examination that the 20% special pay is allowed to the clerical staff observing factory hours and factory holidays and to the administrative staff and the traffic staff working at the bus station as per 1981 settlement.

5. On the basis of this evidence, the Industrial Court dismissed the complaint. The Industrial Court more or less relied upon the Clause No. 7 of the settlement dated 1-8-1981 which provided that the special pay at the rate of 20% of pay to the categories of workmen who are entitled to it at present under the existing settlement shall be continued and shall be subject to the maximum of Rs. 150/- per month. The Industrial Court went on to hold that there was nothing to show that the petitioner was already entitled to this pay on the date of the settlement dated 1-8-1981. It was observed in the order that the petitioner was throughout working in the factory and not in any other office where the working hours were 6 1/2 hours per day only. As regards the posting order of the petitioner wherein the Works Manager had granted the 20% of pay, the Court observed that that pay would have been admissible only if the petitioner had worked for more than 8 hours. The Industrial Court further noted that the working hours of the Fire Warden who were attached to the workshop were eight hours and it was only the clerical or administrative staff whose ordinary working hours were 6 1/2 hours who would be entitled to the special pay if they were asked to work in the Central Workshop having eight hours as the working hours. He also gave a categorical finding that the post of the Fire Warden did not come within the purview of clerical or administrative staff. The Industrial Court further noted that the subject index at serial No. 73 at page 278 of the Collection of Agreements provided special pay only to the clerical staff and since the petitioner was not amongst the clerical staff he was not entitled to such a pay. The Industrial Court gave a categorical finding that it was only by a mistake that the complainant was being paid 20% of the allowance till the impugned order was passed withdrawing this concession. In that view of the matter, the complaint was dismissed. It is this order which is challenged herein.

6. Shri P.T. Trivedi, the learned Counsel for the petitioner, very strenuously urged before me that the settlement dated 20-6-1963 and more particularly Item No. 4(k) was extremely clear to suggest that the ministerial and the clerical staff and the storekeepers working at the depots, divisional workshops and the stores if required by the administration in writing to observe the same hours of work and holidays as the factory workers were entitled to a special pay of 15%. He rightly points out that later on this 15% of the basic pay was increased to 20% by the later agreements. Shri Wankhede has no quarrel with this proposition. Shri Trivedi also relies on extract of item No. 3 of settlement dated 19-5-1973 which has already been reproduced earlier and asserts that since he was from either the ministerial staff or clerical staff as the case may be, the petitioner was entitled to the special pay.

7. As against this, Shri Wankhede, the learned Counsel for the respondent,

invites my attention to the fact that it was only the ministerial or clerical staff which was entitled to the special pay provided such a staff had the ordinary duty of 6 1/2 hours and were asked in writing by the administration to put in the duty of eight hours on the factory premises. There is no dispute that the petitioner is working in the Central Workshop which is deemed to be the factory and is putting in 8 hours of service. Shri Wankhede is at pains to point out that the ordinary working hours of the Fire Warden as per the Circular No. 26/83 are 8 hours. He, therefore, argues that unless it is established that the workman is from a ministerial or clerical staff and unless it is further established that his ordinary working hours are 6 1/2 hours and yet he is asked to work for 8 hours in a factory, the special pay could not be given to the workman like the petitioner.

Let us first consider as to what are the ordinary working hours of a Fire Warden. In that behalf reliance of Shri Wankhede on Circular No. 26/83 appears to be completely justified. This circular specifically gives the working hours of all the categories. At category No. 53 the Fire Warden is specifically mentioned whose duty hours are mentioned as 8 hours when attached to workshop. Shri Trivedi in this behalf drew my attention to a letter dated 7-2-1968 allegedly written by Chief Security Officer, M.S.R.T.C. to Divisional Security Inspector, State Transport Corporation, Nanded. In this the Chief Security Officer proceeds to write that the security staff is a wing of administrative staff and the normal working hours applicable to the administrative staff, i.e. 7 hours per day and 3 1/2 hours on Saturday would be applicable also to the security staff and, therefore, the security staff should ordinarily observe only these office hours. It is further mentioned in the letter that the security staff being of executive nature and their duties being multifarious, it may not be possible to adhere rigidly to the working hours particularly in emergencies. However, they would be entitled to all the holidays which are permissible to the administrative staff. Shri Trivedi very heavily relies on this letter. In the first place this letter was not a part of the record of the trial Court as it was not proved before the trial Court. It could not, therefore, be taken into consideration by the trial Court. Even if it is presumed that it can be used by Shri Trivedi in this Court, the letter nowhere mentions that it is applicable to a Fire Warden. Shri Trivedi further relies on a posting order dated 14-6-1986 whereby the petitioner was transferred and posted in the Central Workshop at Nagpur. The said document describes that the petitioner has been assigned to the security branch. He also relies on his appointment letter to suggest that he is a part and parcel of the security branch. Question still remains as to whether this letter dated 7-2-1968 would have any binding effect. In this behalf, there is nothing on record to suggest that the Chief Security Officer of the Corporation had any such authority in law or otherwise to fix the working hours. It may be the opinion of the Chief Security Officer, M.S.R.T.C. that the working hours of the security staff are only 6 1/2 hours a day as expressed in this letter. However, it cannot be forgotten that the Circular No. 26/83 is latter in point of time as it is dated 5-12-1983. There is a clear-cut mention in this circular to the demands raised by the various unions to fix the prescribed hours of work and it

is in pursuance of those demands and the settlements between the unions and the Corporation that the said circular gives an exhaustive list of all the categories of workmen and also fixes their working hours. In the absence of any evidence as to the authority of the Chief Security Officer, M.S.R.T.C. and further in the absence of any evidence as to the binding effect of the letter dated 7-2-1968, it will have to be held that the ordinary working hours of the Fire Warden had to be fixed as per the circular No. 26/83 and a Fire Warden had to work for eight hours ordinarily. Shri Trivedi further relies upon Schedule I attached to Settlement at page 21 of the Collection of Labour Agreements and points out that the post of a Fire Warden is mentioned at category No. 63 and that is included in the administration department. According to him, all the workers in the administration department had the working hours of 6 1/2 hours as per the settlement and more particularly paragraph 5(1) which runs as under :-

"Working hours of all administrative offices shall be 40 hours per week. 20% special pay subject to the maximum of Rs. 150/- per month admissible to certain workman as per past settlement will be continued on same terms and conditions only to the categories which are presently covered."

Reliance on this Clause 5(1) is completely uncalled for because the 20% of pay is given only to those workmen who are covered by the earlier agreements. The working hours of 40 hours as provided in this clause are not for the administrative staff but for the administrative offices. The argument must fall that merely because the petitioner has been described to be belonging to the administrative category, he also is entitled to work only for 40 hours which are fixed as office hours only. There is a difference in the working hours of the offices and the working hours fixed for the staff. Therefore, merely because the petitioner is described to be a part and parcel of the administrative department, it could not be presumed that he had the working hours only of 40 hours or so and it will have to be held that the Circular No. 26/83 dated 5-12-1983 covered the field, It will have to be, therefore, held that the petitioner had the working hours of eight hours a day.

9. Once this conclusion is reached, the mainstay of the stand of the petitioner is removed. He is not working for any extra time. Under the circulars and the relevant rules the petitioner being the Fire Warden must work for eight hours a day. The question is as to whether by working for eight hours a day, the petitioner is still entitled to the special pay of 20%. This entitlement shall necessarily depend upon as to whether the petitioner belongs to the administrative, clerical or ministerial staff as the case may be. There is no mention of the administrative staff being entitled to 20% of special pay. Care has been taken in all the agreements to mention only the ministerial or clerical staff to be entitled to the special pay of 20%. Therefore, if the petitioner is successful in proving that he is from the ministerial or clerical staff, then he would still be entitled to 20% of special pay. Shri Trivedi submits that the petitioner has been mentioned to be a part and parcel of the administrative staff and as such all the

administrative staff should be deemed to be the ministerial staff. The argument is clearly incorrect. All the administrative staff cannot be deemed to be a ministerial staff. It may be relevant in this behalf to see what is the ministerial staff. The word "Ministerial" has been defined in Black's Law Dictionary as under :-

" "Ministerial" : That which is done under the authority of a superior; opposed to judicial. That which involves obedience to instructions, but demands no special discretion, judgment or skill..... Official's duty is "ministerial" when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts....."

The term "Ministerial act" is defined in Black's Law Dictionary as one which a person or board performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority without regard to or the exercise of his or their own judgment upon the propriety of the act being done, The term "Ministerial duty" is defined as under :-

" "Ministerial duty" : One regarding which nothing is left to discretion- a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist."

It goes without saying that the term "Ministerial staff" will have to be interpreted in the light of the above mentioned terms. All the earlier agreements have been thoroughly scanned by both the learned Counsel painstakingly to search out for a definition of a "ministerial staff. There is no such definition available in the earlier agreements. However, the claim of Shri Trivedi is that the term ministerial staff will have to be taken to mean the administrative staff. There is really no justification for this contention. The administrative staff may include a ministerial and non-ministerial staff too. The ministerial staff will have to be necessarily such a staff which cannot use any discretion or which is of a clerical nature necessarily. The essence of the term ministerial appears to be where no discretion lies in the execution of that duty. A Fire Warden cannot be said to have no discretion at all. By reason of his duties a Fire Warden would have to use the discretion demanding on the situation. He may have to decide as to what material should be used for extinguishing a fire - whether water would do or whether it could be a gas. He will have to take a decision as to whether the staff should be reached to the place where the fire has broken out and the kind of care that he will have to take to avoid the damage to the property or otherwise. There is ample discretion in duties of the Fire Warden. Undoubtedly, there has been no evidence led but this Court cannot shut itself from the ordinary duties of fire fighting personnel. Shri Wankhede points out that a Fire Warden is required to be a trained person having obtained a Diploma in Fire Fighting. Therefore, undoubtedly the very nature of the duty requires a special skill and where the special skill is required the duty does not remain ministerial. For this reason, it cannot be said that the Fire Warden would be a part and parcel of the ministerial staff. Once that conclusion is reached, then it is not even the case of the

petitioner that he belongs to the clerical staff. Therefore, the conclusion is irresistible that the petitioner is neither a part of the ministerial staff nor a part of the clerical staff. It is only these two categories which are entitled to the special pay in the light of the relevant clauses of the settlement. The petitioner thus having been unable to prove himself to be belonging to the ministerial or clerical staff, will not be entitled to any special pay and it is hereby declared that he was never entitled also in the past. Shri Wankhede informs in this behalf that the post of a Fire Warden is not for the purposes of the administrative offices and is restricted only to the factories. That also would give us a necessary idea as to the nature of the petitioner's duties.

10. Under such circumstances, it cannot be said that the Industrial Court had committed any error in dismissing the complaint of the petitioner holding him to be not belonging to the clerical staff. The petition has no merits and must fail. It is dismissed. However, under the circumstances, there shall be no order as to the costs.

11. Petition dismissed.