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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12 OF 2026

1. **Brihanmumbai Municipal Corporation**, through the Municipal Commissioner & Administrator, Dr. Bhushan Gagrani or his Successor, having office at : Municipal Head Office, Mahapalika Marg, CSMT, Mumbai – 400 001
2. **Dr. Ashvini Joshi**, or her Successor, Additional Municipal Commissioner (City)
3. **Kishor Gandhi**, Deputy Municipal Commissioner, (General Administration), all having office at Municipal Head Office, Mahapalika Marg, CSMT, Mumbai 400 001.

… **Petitioners**

V/s.

Mumbai Mahanagarpalika Karyalayeen Karmachari Sanghatana, Mumbai office at Municipal Head Office, Extension Building, Basement, Mahapalika Marg, Mumbai – 400 001

… **Respondent**

WITH

WRIT PETITION (ST.) NO.41402 OF 2025

1. **Brihanmumbai Municipal Corporation**, Municipal Head Office at Mahapalika Marg, Mumbai – 400 001

2. **Municipal Commissioner,**
   Brihanmumbai Municipal Corporation,
   Municipal Head Office at Mahapalika
   Marg, CSMT, Mumbai – 400 001

3. **Additional Municipal Commissioner (City)**, Brihanmumbai Municipal Corporation,Municipal Head Office aat Mahapalika Marg, CSMT, Mumbai – 400 001

4. **Deputy Municipal Commissioner (General Administration)**,
   Municipal Head Office
   Mahapalika Marg, CSMT,
   Mumbai – 400 001 **… Petitioners**

V/s.

The Municipal Union,
having its office at Sunshine Plaza,
4th Floor, Mumbai Marathi Granth
Sangrahalay Marg, Dadar (East),
Mumbai – 400 014 **… Respondent**

Mr. N.V. Bandiwadekar, Senior Advocate with Mr. Santosh Parad for the petitioners in WP/12/2026.

Mr. Santosh Parad for the petitioners in WPST/41402/2025.

Mr. Prakash Devdas with Ms. Vidula Patil for the respondent in WP/12/2026.

Mr. Satyanarayan Hegde i/by Mr. V. Khemka for the respondent in WPST/41402/2025.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 23, 2026

PRONOUNCED ON : FEBRUARY 12, 2026

JUDGMENT:

1. The Petitioners have instituted the present writ petition impugning the judgment and order rendered by the Industrial Court in Complaint (ULP) No. 282 of 2025. By the said order, the Industrial Court allowed the application at Exhibit "U2" preferred by the Respondents, stayed the operation of the circular dated 05th September, 2025, and directed the Petitioners to continue the prevailing practice of granting one or two additional wage increments to employees who had secured admission to, and obtained, Diplomas in LSG and LGS even subsequent to 29th August, 2000. The challenge in the present proceedings arises from the said interlocutory order and the directions contained therein.

2. The record indicates that the Petitioners, by decision dated 04th February, 1967, resolved to grant one additional increment to employees serving as clerks upon acquisition of a Diploma in Local Self Government (LSGD). A similar benefit of one additional increment was extended to those employees whose pay scales did not exceed the maximum of the clerical grade, upon their acquiring the said diploma. The object of this decision was to incentivize and encourage employees to obtain higher qualifications. Subsequently, in its meeting dated 10th July, 1968, the Standing Committee approved a proposal introducing one additional increment for possession of an LGS Diploma, which

culminated in the Corporation's Resolution dated 23rd September, 1968. Thereafter, by Resolution dated 29th January, 1975, the Standing Committee sanctioned the grant of two increments to Municipal employees acquiring an LGS Diploma, provided their pay scale did not exceed Rs. 660 and subject to stipulated conditions. This was followed by the Corporation's Resolution dated 06th March, 1975, giving effect to the said decision.

3. The aforesaid policy underwent further modification by circulars dated 07th June, 1984, issued in the backdrop of a general revision of pay scales of Municipal employees with retrospective effect from 01st January, 1975. Under the revised scheme, two additional increments were made admissible to Municipal employees who passed or acquired an LGS Diploma, provided that the maximum of their pay scale did not exceed the maximum prescribed for the cadre of Office Superintendent or AA-II.

4. It is the case of the Petitioners that the original circular dated 04th February, 1967 was thus altered and refined from time to time through successive resolutions and circulars. According to the Petitioners, these decisions were matters of policy determined by the Standing Committee in exercise of its administrative authority, and neither the employees nor their Union were consulted or involved in the formulation or modification of the policy relating to grant of additional increments.

5. By circular dated 25th September, 2009, the earlier circulars were again modified pursuant to approval granted by the

Municipal Corporation on 15th September, 2009. Thereafter, the Petitioner–Corporation placed a proposal dated 18th August, 2025 before the Standing Committee seeking discontinuation of the additional increment, setting out the reasons in support thereof. Since the Standing Committee stood dissolved at the relevant time, the proposal was placed before the Administrator, who approved it on 25th August, 2025, resulting in the cancellation of the earlier circulars. Subsequently, on 29th August, 2025, a resolution was passed clarifying that additional increments for LSGD and LGS would be governed by specified conditions. Upon completion of the requisite formalities and approval process, the Corporation issued the circular dated 05th September, 2025, which forms the subject matter of challenge before the Industrial Court.

6. Aggrieved thereby, the Respondent instituted Complaint (ULP) No. 263 of 2025 alleging commission of unfair labour practice. It was contended that the Corporation could not unilaterally alter service conditions relating to qualifications and monetary benefits without issuing a notice of change as mandated under Section 9A of the Industrial Disputes Act. The Petitioners opposed the complaint and the accompanying application for interim relief by filing a detailed reply. However, by order dated 11th December, 2025, the Industrial Court granted interim relief, stayed the operation of the circular dated 05th September, 2025 pending final adjudication of the complaint, and directed the Petitioner–Corporation to continue the earlier practice of granting one or two additional increments. The present petition challenges the legality and correctness of the said interim order.

7. Mr. Bandiwadekar, learned Senior Counsel appearing for the Petitioners, submitted that the Industrial Court has virtually granted final relief at the interim stage, which is impermissible in law. On that ground alone, according to him, the impugned order warrants interference. He contended that the grant of one or two additional increments was a voluntary policy decision of the Petitioner–Corporation, intended to encourage clerical staff to acquire additional qualifications. He argued that the Industrial Court proceeded on an erroneous premise by treating such increments as benefits granted to employees upon passing departmental examinations, which, according to him, is factually incorrect.

8. Learned Senior Counsel further submitted that the Industrial Court wrongly concluded that withdrawal of an increment forming part of basic pay amounts to alteration in wage structure attracting Item 1 or Item 4 of Schedule IV of the Industrial Disputes Act. He pointed out that the Respondent–Union had not invoked any specific item under Schedule IV. It was argued that the decision to discontinue future increments does not result in reduction of wages already drawn by any employee. He contended that the finding of the Industrial Court that such increments constitute a well-recognized service condition, and that their withdrawal alters the fundamental wage structure with continuing future impact, is legally unsustainable and contrary to the material on record.

9. It was further submitted that the circular dated 05th September, 2025 does not adversely affect employees who have already been granted additional increments. Those increments

continue to be protected. He contended that clerks and Head Clerks who acquired LSGD or LGS diplomas on or before 29th August, 2025 remain entitled to such increments even under the said circular. According to him, no dual wage structure has been created. On these grounds, he urged that the impugned order be set aside.

10. In opposition, Mr. Satyanarayan Hegde learned counsel for the Respondent supported the impugned order. He submitted that pursuant to the Corporation's Resolution dated 08th December, 1966, the Petitioner–Corporation has continuously granted one additional increment to employees possessing LSGD up to 04th September, 2025. Likewise, in view of the Standing Committee Resolution and the Corporation's Resolution dated 06th March, 1975, two additional increments were granted to employees holding an LGS diploma. He argued that such long-standing and uninterrupted practice has acquired the status of a service condition. Any alteration thereof, according to him, attracts the mandate of Section 9-A of the Industrial Disputes Act.

11. He further submitted that before effecting discontinuance of additional increments, the Corporation was bound to issue a notice of change under Section 9-A read with Item 8 of Schedule IV of the Industrial Disputes Act. No such notice was issued. Consequently, according to him, the action amounts to an unfair labour practice within the meaning of Items 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971. He contended that the Union has established a prima facie case demonstrating unilateral withdrawal of a long-standing benefit without compliance with statutory requirements.

12. Ms. Vidula Patil, learned counsel for the Respondent-Union, submitted that the condition of granting one increment for passing LSGD and two increments for passing LGS has crystallized into a customary concession and recognized service condition. Its withdrawal, she contended, is prejudicial to workmen and squarely falls within the ambit of Item 8 of Schedule IV of the Industrial Disputes Act, as also Items 3 and 7 thereof. She maintained that compliance with Section 9-A is mandatory where alteration in service conditions is proposed.

13. She submitted that the Petitioner has admittedly failed to comply with Section 9-A read with the relevant items of Schedule IV of the Industrial Disputes Act. According to her, Items 1, 7 and 8 of Schedule IV are clearly attracted. In absence of a statutory notice of change, the action of the Corporation constitutes an unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971.

14. Placing reliance upon the decision of the Supreme Court in *S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Ltd., reported in 1986 Law Suit (SC) 98*, she submitted that statutory obligations operate irrespective of their incorporation in employment contracts, and any action contrary to law is rendered invalid.

15. She also relied upon the judgment of the Supreme Court in *Paradeep Phosphates Ltd. v. State of Orissa and Others, reported in 2018 Law Suit (SC) 400*, to contend that issuance of notice of change under Section 9-A is mandatory and cannot be dispensed

with. Further reliance was placed on the decision of the Hon'ble Supreme Court in Annamalai University case, wherein it was held that when a statute prescribes a particular procedure, the same must be strictly followed and no deviation is permissible.

16. It was contended that in the present case, the proposed withdrawal of increments amounts to alteration of existing service conditions to the detriment of workmen who are members of the Respondent-Union. Such alteration, effected without compliance with Section 9-A, has resulted in serious prejudice and financial loss. It was therefore submitted that the Industrial Court has correctly recorded a finding of a strong prima facie case of breach of Section 9-A read with Schedule IV, and that the interim protection granted is justified. According to the Respondents, no interference is warranted in exercise of writ jurisdiction. In the aforesaid circumstances, the Respondents prayed for dismissal of the writ petition with costs.

Reasons and analysis:

Statutory framework.

17. Section 9-A of the Industrial Disputes Act, 1947 reads as under:

> "**9-A. Notice of change.**-- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change
>
> a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

b) within twenty-one days of giving such notice.

Provided that no notice shall be required for effecting any such change

a) where the change is effected in pursuance of any settlement or award; or

b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services Regulations, Civil Service Temporary Service Rules, Revised Leave Rules, Civil Service (Classification, Control and Appeal) Rules, Civil Service (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other rules or regulations notified in this behalf by the appropriate Government in the Official Gazette apply."

18. Item 5 of Schedule IV to the Industrial Disputes Act, 1947 reads as under:

"Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders."

19. Item 8 of Schedule IV reads as under:

"Withdrawal of any customary concession or privilege or change in usage."

20. Item 9 of Schedule IV reads as under:

"Introduction of new rules, or alteration of existing rules, except in so far as they are provided in standing orders."

21. For the purpose of deciding the controversy raised in the present writ petition, it is necessary to examine the above statutory scheme governing the field.

22. Section 9-A of the Industrial Disputes Act restrains an employer from effecting any change in the conditions of service applicable to workmen in respect of matters enumerated in the Fourth Schedule unless a notice of change is first issued in the prescribed manner. The provision introduces a waiting period of twenty one days after issuance of such notice, during which the proposed change cannot be implemented. The section provides that the employer may propose. However, the employer cannot act immediately. The time gap is intended to afford workmen an opportunity to consider the proposal, raise objections and if necessary seek conciliation.

23. The Fourth Schedule provides specific categories of matters which Parliament considered necessary which require prior notice before alteration. Item 8 contemplates withdrawal of any customary concession or privilege or change in usage. The expression "customary concession" is not confined to statutory rights or contractual stipulations alone. A benefit extended consistently over a period of time, acted upon, and accepted as part of the service may acquire the character of a customary concession. Once such a character is established, its withdrawal falls within the purview Section 9-A.

24. Item 5 and Item 9 of the Fourth Schedule address introduction of new rules or alteration of existing rules relating to discipline and other matters, except in so far as they are provided in standing orders. The statute recognises that changes in rules which may have a direct bearing on the rights and obligations of workmen cannot be effected unilaterally without compliance with

the statutory procedure.

25. The scheme of Section 9-A read with the Fourth Schedule thus regulates the manner in which change is to be brought about. Any unilateral withdrawal of an established concession, or alteration of rules that have governed service conditions, without issuance of notice and observance of the prescribed period, would amount to bypassing the legislative mandate. The requirement of notice is a condition precedent to the validity of the proposed change in respect of matters covered by the Fourth Schedule.

Nature of the benefit.

26. The material placed on record shows that the beginning of the concession can be traced to the decision taken in the year 1967, whereby the Corporation resolved to grant additional increments to employees acquiring specified diplomas in Local Self Government. In the years 1968, 1975 and 1984, the Standing Committee as well as the Corporation revisited the policy, modified and reaffirmed it through resolutions and circulars. Each of these instruments was was acted upon in implementation.

27. The benefit was extended to defined clerical cadres and to employees falling within specified pay ceilings. The grant of increments followed getting of LSGD or LGS diplomas in a consistent manner. Over time, the practice became part of the service structure of the establishment. Employees who pursued such qualifications did so with the legitimate expectation that the additional increment would follow. The continuity of the policy over several decades indicates that it was neither temporary nor

discretionary in an ad hoc sense. It assumed the character of a regular feature of service.

28. When a concession is repeatedly sanctioned by formal resolutions, implemented uniformly, and continued without interruption for a long duration, it acquires sanctity within the establishment. In industrial jurisprudence, such a long standing and consistent practice is capable of converting into a concession or established usage. Item 8 of the Fourth Schedule specifically takes within its fold withdrawal of any customary concession or privilege or change in usage. The record supports the inference that the grant of additional increments for LSGD and LGS diplomas had attained that character.

Whether the circular effects a change.

29. The circular dated 5 September 2025 effects a prospective discontinuance of the benefit. It saves increments already granted. However, it closes the door for employees who would acquire the requisite diplomas thereafter. The core issue is whether such prospective stoppage amounts to a change in conditions of service within the meaning of Section 9-A.

30. The argument that no present reduction in wages occurs does not conclude the enquiry. Section 9-A does not confine itself to cases of immediate monetary deduction. The expression "change in conditions of service" is of wider amplitude. Where a category of employees, upon fulfilling defined conditions, was entitled as a matter of consistent practice to receive additional increments, the removal of that entitlement alters the service

regime governing that category. The fact that the change operates prospectively does not dilute its character as a change. The statute is concerned with the nature of the alteration, not merely with its temporal reach.

31. By withdrawing the concession for the future, the Corporation has altered the framework within which employees may seek advancement in pay upon acquisition of qualifications. The structure of entitlement has been modified. Employees who acquire diplomas after the effective date stand in a materially different position from those who did so earlier. That differentiation flows directly from the impugned circular. Such alteration squarely falls within the field contemplated by Item 8 of the Fourth Schedule.

32. The legislative intent underlying Section 9-A is to ensure that workmen are not confronted with unilateral changes affecting established service conditions without prior notice and opportunity to respond. The requirement of notice is not limited to cases where accrued wages are withdrawn. It extends to situations where a customary benefit forming part of the service pattern is sought to be discontinued. On a plain reading of the statutory text, and in light of settled principles governing industrial relations, the prospective withdrawal of a long standing concession constitutes a change attracting the mandate of Section 9-A.

Interim relief standards.

33. The Industrial Court applied the well known test for interim protection in unfair labour practice complaints. The Court

recorded a prima facie case, found that irreparable injury was likely if the circular were to be allowed to operate pending final adjudication, and held that the balance of convenience favoured preservation of the status quo. The record discloses material on continuity of the practice, the representations made by the Union, and the absence of any notice of change having been given prior to the circular. Those findings, if supported by material on record, suffice for maintenance of interim protection until final adjudication. The existence of a statutory procedure that was not followed strengthens the Union's claim at the prima facie stage. The Supreme Court has emphasised that where the statutory procedure is mandatory, an employer's failure to comply itself furnishes strong material for a prima facie case.

Whether the Industrial Court granted final relief at the interim stage.

34. The Industrial Court has, by the impugned order, stayed the operation of the circular and directed that the earlier practice of granting additional increments shall continue for the time being. The effect of this direction is limited. It maintains the position as it stood prior to issuance of the circular. It prevents an immediate disruption in the service conditions of the concerned employees. In other words, it preserves the status quo.

35. An interim order must be understood in its proper setting. At that stage, the Court is not expected to record final findings on disputed questions. It is required to ensure that the subject matter of the complaint is not rendered infructuous before it is finally

decided. Here, if the circular were allowed to operate without restraint, employees acquiring diplomas during the pendency of the complaint would stand deprived of the benefit. Once that stage passes, restoration may not be simple. The interim protection therefore serves a practical purpose.

36. The real test is whether the Industrial Court has finally decided the rights of the parties or whether it has only preserved the existing arrangement until the complaint is heard and disposed of on merits. A careful reading of the order shows that the Court has not conclusively pronounced upon the legality of the circular. It has not declared the circular invalid. It has only kept it in abeyance until final adjudication. The direction to continue the prior practice operates only during the pendency of the proceedings.

37. It is also necessary to keep in mind the statutory background. Section 9-A places a clear restriction on effecting changes in service conditions without notice where the matter falls within the Fourth Schedule. When a long standing concession is sought to be withdrawn without following that procedure, the Court is justified in being cautious. Until the issue is fully examined, maintaining the existing arrangement is a reasonable course.

38. The contention that the Industrial Court has granted final relief at the interim stage does not stand scrutiny. Final relief would mean a definitive adjudication on the legality of the circular with binding consequences. That has not occurred. The present order is temporary in nature. It operates only to prevent possible

prejudice during the pendency of the complaint. The petitioners have not demonstrated that the Industrial Court exceeded its jurisdiction or pre judged the matter.

39. In these circumstances, the grievance that final relief has been granted at the interim stage is not borne out by the record. The order under challenge is essentially protective. It does not foreclose the rights of either party at the stage of final adjudication.

40. Petitioners submit that the grant of increments was voluntary and purely discretionary. An employer may at any time grant a discretionary benefit. However, where a discretionary concession is granted repeatedly, approved by administrative authorities, published by circular and acted upon for decades, it may acquire the character of a customary concession or service condition. The facts here show repeated administrative approvals and incorporation in published circulars and resolutions. That pattern removes the concession from the realm of purely isolated discretion. Where the concession so crystallises, the employer cannot withdraw it without compliance with Section 9-A.

41. Petitioners submit that those increments, so far as already granted, are not affected by the circular and no reduction of wages is claimed. It is correct that the circular preserves increments already granted. That fact is material but not decisive. The statutory protection is not confined to retrospective protection of sums already paid. It extends to preventing unilateral alteration of entitlements that form part of the service regime going forward.

The withdrawal of a concession that has been habitually extended to a defined class of employees alters the terms on which employees will be engaged in future. That alteration lies within the statutory mischief Section 9-A seeks to remedy. The petitioners' argument that no immediate reduction of wages already drawn occurs therefore does not negate the statutory requirement of notice.

42. Petitioners argue that cessation of future grants does not amount to change in conditions of service. The respondents relied on multiple items of the Fourth Schedule and on companion provisions of state unfair labour practice law. Item 8 is squarely engaged. Items dealing with rules of discipline or alteration of rules may also be attracted if the concession has been formalised into service rules or standing orders. The precise scope and classification are matters for final adjudication. At the interlocutory stage it suffices that Item 8 is plainly engaged on the established facts.

43. On review of the material and the legal position, the Industrial Court did not commit error in staying the circular dated 5 September 2025 and directing continuation of the prior practice until final adjudication. The respondents have established a strong prima facie case that the circular effects a change caught by Section 9-A and Item 8 of the Fourth Schedule. The balance of convenience and the risk of irreparable prejudice likewise favour preservation of the status quo. The interim order was therefore legally sustainable.

44. The Industrial Court will proceed to decide the complaint on merits with expedition. The parties shall be at liberty to lead evidence on the historic practice, the nature of approvals and circulars, the precise contents of the standing orders, and the administrative and financial considerations relied upon by the Corporation. The Industrial Court shall determine whether the prior practice has crystallised into a service condition or customary concession, whether the Fourth Schedule was attracted, and whether the statutory procedure was complied with. If the Industrial Court finds non-compliance with Section 9-A, it shall consider the appropriate remedy within the statutory scheme and principles of industrial jurisprudence.

45. It is clarified that all observations recorded herein are confined to a prima facie assessment undertaken for the purpose of examining the legality of the interim order. These observations shall not be construed as final findings on the merits of the controversy. The Industrial Court shall decide the complaint independently, on the basis of the evidence and material placed before it, and without being influenced by any tentative views expressed in this judgment.

46. The writ petition is dismissed. The interim order of the Industrial Court dated 11 December 2025 is upheld.

47. At the request of learned Advocate for the petitioner, ad-interim relief granted earlier shall continue to operate for a period of four weeks from today.

48. No order as to costs.

(AMIT BORKAR, J.)