

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3792 OF 1994
SHRIKANT S/O VINAYAK TENDULKAR VS.GANGARAM
BHAURAO PATIL
WITH
WRIT PETITION NO.3797 OF 1994
(SHRIKANT S/O VINAYAK TENDULKAR VS.TUKARAM S/O
SANTOSH PATIL)
WITH
WRIT PETITION NO.3805 OF 1994
SHRIKANT S/O VINAYAK TENDULKAR VS.SHANTARAM NAMDEO

Mr.S.R.Barlinge, Advocate for the petitioner.
Mr.V.Y.Patil, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/06/2015

PER COURT :

1. These 3 petitions were admitted by this Court vide order dated 10/11/1994, which reads thus :-

“Heard.

Rule. Expedite.

Ad-interim relief in terms of prayer 'B' on condition that the petitioner shall deposit 50% of the amount under each award in office of Labour Court, Jalgaon within two weeks.”

2. By order dated 02/03/1995, this Court permitted the petitioner to deposit the amount in this court instead of depositing it in the Labour Court. It is not in dispute that the amount assessed

by the Labour Court, whose common judgment dated 20/06/1994 is impugned in these petitions, was an amount of Rs.20,095/- with 9% interest in favour of each of the 3 respondents.

3. By order dated 09/08/1996, this Court allowed Civil Application Nos.4012/1996, 4128/1996 and 4189/1996 filed in these 3 petitions respectively, vide which the respondents were permitted to withdraw the amount deposited by the petitioner by furnishing a surety to the satisfaction of the Additional Registrar of this Court.

4. I have heard Mr.Barlinge, learned Advocate for the petitioner and Mr.V.Y.Patil on behalf of all the respondents at length. With their assistance, I have gone through the petition paper book.

5. These respondents had claimed legal dues payable by the employer under section 33(C)(2) of The Industrial Disputes Act, 1947 by preferring Application (I.D.A.) Nos. 191/1988, 192/1988 and 193/1988 before the Labour Court. The petitioner herein had opposed these applications by filing his written statement and with a chart of number of days worked by the applicants. By the impugned judgment 20/06/1994, these applications were allowed.

6. Mr.Barlinge has drawn my attention to the conclusions drawn by the Labour Court to buttress his assertion that the impugned judgments are unsustainable. He points out 3 sentences below paragraph No.7, which read thus :-

“1. So also, I do not understand what has compelled to these applicants to continue with this matters by both sides to the litigation too; it has come to this court to decide the same on the scanty evidence led by applicants in all these matters and opponent has preferred to lead evidence through supervisor by name Fase and he was reluctant to come before this Court personally or through reliable representatives through payment if any made by him in favour of these applicants.

2. Therefore, on these counts, the applicants have not strongly proved and established their cases as against the common opponent, but there is room of doubt, and benefit of doubt which deserved to be given to the applicants and no doubt they were working with this common opponent as ‘Saldars” an annual wage workers, but it is pleaded therein and accepted in toto in principle, by the common opponent that, they have been paid monthly wages at the rate of Rs.270/- p.m. as mentioned therein, but these applicants have strong case in their favour as against the common opponent, who happened to be in the shows of employer and not anybody else.

3. Naturally, the applicants are hailing from above permanently residing at their working place as shown in petition

respectively, and employer is controlling these people on riding horse at remote place like Pune, therefore, his version through Supervisor by name Fase cannot be relied upon and liable to be not taken into consideration.”

7. He, therefore, submits that the Labour Court, in the second sentence reproduced above, clearly comes to a conclusion that the applicants (respondents herein) have not strongly proved and established their cases as against the petitioner, that there is room of doubt and benefit of doubt deserves to be given to the applicants. He, therefore, submits that the Labour Court has allowed the applications filed by the respondents purely out of misplaced sympathy and on assumptions.

8. He makes a serious grievance as regards the conclusions of the Labour Court contending that the Labour Court itself had concluded that the applicants had no case on merits and yet it holds that there is some doubt in the matter and therefore the applicants deserve the benefit of doubt.

9. Mr.Barlinge has thereafter highlighted various portions from the judgment and submits that the entire judgment is confusing and

the Labour Court has put forth absurd conclusions. To make things worse, interest @ 9% was imposed on the amounts directed to be paid when the Labour Court itself was not convinced about the strength in the claims of the respondents.

10. Mr.Patil has made a valiant attempt to support the impugned judgment. He submits that this case needs to be looked at sympathetically as the respondents are poor workers and have been struggling for their rights for the last 27 years after having quit employment in July 1987. He further states that the legal rights of the workers are to be upheld and the amount of outstanding dues arrived at by the Labour Court needs to be recovered from the petitioner. It is, therefore, prayed that these petitions be dismissed with costs.

11. Having considered the impugned judgment and the reasons assigned by the Labour Court, I am not convinced that the contentions of Mr.Patil could be accepted.

12. Section 33(C)(2) is one of those provisions set out in the I.D.Act, 1947 which aims at enabling the workmen to approach the competent court directly for the recovery of the dues payable by an

employer. The rigours of raising an industrial dispute leading to the reference of the dispute to a Tribunal, are kept away by Section 33(C) (2) to ensure quick relief and payments of amount due by the employer to the workmen. While doing so, the Labour Court has to arrive at a definite finding that the amount is due from an employer and impose interest on the amount, if it notices that the employer has mischievously or vexatiously deprived the workers of their legal dues.

13. When the Labour Court came to a conclusion that the applicants have come to this court to have their applications decided on “scanty evidence” and they have not made out a strong case or proved their claims, it is beyond comprehension as to how could the Labour Court then allow the entire claim of the applicants and impose interest of 9%.

14. Mr.Patil has appealed to this court that the amount withdrawn by the poor respondents pursuant to the order of this Court dated 09/08/1996, which is practically 19 years ago, should not be recovered after such a long passage of time. They should be mercifully exempted from such recovery in the event this Court is pleased to allow these petitions.

15. Mr.Barlinge, while responding to the appeal of the learned Advocate Mr.Patil, has graciously stated that in the event of these petitions are allowed, rather than remanding the matters after about 28 years of the date of alleged cause of action, the respondents may retain the said amount, which by now must have multiplied 3 times if the rate of interest is to be calculated. That would virtually therefore take care of their entire claims set out in the application.

16. In the light of the above, these 3 petitions are allowed. The impugned judgment and order dated 20/06/1994 in Application (I.D.A.) Nos.191/1988, 192/1988 and 193/1988 is quashed and set aside. Nevertheless, considering the request made by learned Advocate Mr.Patil, which has been graciously accepted by learned Advocate Mr.Barlinge, the amounts withdrawn by the respondents shall not be recovered. The 3 applications Nos. Application (I.D.A.) Nos.191/1988, 192/1988 and 193/1988 stand disposed of.

17. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)