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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3432 OF 2014

Tukaram Vitthal Bhondve,
Aged : 60 years,
R/o at Ukhanda (Pitti),
Post.Nirgudi, Taluka : Patoda,
District : Beed.

...PETITIONER

-VERSUS-

Gajanan Sahakari Sakhar
Karkhana Limited, Sonajinagar,
Rajuri (N), Taluka & District Beed.
Through Managing Director.

...RESPONDENT

WITH
WRIT PETITION NO. 3433 OF 2014

Bansi S/o Aabaji Wanve,
Aged : 63 years,
R/o At.Kacharwadi,
Post.Dongar Patoda, Taluka Beed,
District Beed.

...PETITIONER

-VERSUS-

Gajanan Sahakari Sakhar
Karkhana Limited, Sonajinagar,
Rajuri (N), Taluka & District Beed.
Through Managing Director.

...RESPONDENT

...

Mr.Sawji Ulhas S., Advocate for the Petitioners/ Employees.

Mr.Mr.Gunale V.D., Advocate for the Respondent/ Employer.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th July, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioners claim to be employees of the Respondent/ Cooperative Sugar Factory. Identical claims were put forth in Application (IDA) Nos.10/2012 and 12/2012, respectively by both these Petitioners invoking Section 33-C(2) of the Industrial Disputes Act, 1947. By identical judgments dated 21.11.2013 both the applications have been rejected. Since an identical issue has been involved in both these petitions, I have taken up these petitions together for passing a common order.

3 I have considered the submissions of the learned Advocates for the Employees and the Management.

4 Shri Gunale, learned Advocate appearing for the Respondent/Management, has placed on record the affidavits in reply in both these petitions.

5 The Petitioners have put forth claims under various heads as unpaid wages, overtime wages, provident fund, gratuity, bonus, etc.. The issues pertaining to the provident fund and gratuity payments cannot be subject matter of an application under Section 33-C(2) since both these issues are governed exclusively by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act, 1972.

6 Shri Sawji, learned Advocate appearing for the Employees, submits that a notice for production of documents was issued to the Respondent/ Management by application dated 24.01.2013. The Management had submitted it's SAY on 20.04.2013 by stating that "*the above documents are relevant, therefore, appropriate order may kindly be passed and obliged.*" Considering the request of the Petitioners/ Employees and the SAY given by the Respondent/ Management on the said application, the same was allowed and the Labour Court by order dated 20.04.2013 directed the Respondent/ Management to deposit the said documents before the Court. Shri Sawji makes a grievance that these documents were not produced only to defeat the claims of the employees.

7 He further submits that the Labour Court has cursorily considered the grievance of the Petitioners. Even on the issue of non

payment of wages, the Labour Court did not go into that aspect so as to arrive at a conclusion as to whether, monthly wages were paid or not. There is no conclusion to that effect.

8 Shri Sawji submits that it was not the case of the Respondent/ Management that the Petitioners have not worked or have been terminated. The defence was that the Respondent factory was closed down about two years ago. Only 25% of the salary was being paid on account of financial difficulties. The Labour Court should have, therefore, at least, considered the aspect as to whether, the Respondent/ Management could prove that monthly wages were paid to the Petitioners.

9 Shri Sawji, therefore, submits that the applications preferred by the Petitioners deserve to be remitted back to the Labour Court with a direction to the parties to lead evidence and with a direction to the Respondent/ Management to produce the documents which have been directed to be produced vide order dated 20.04.2013 passed by the Labour Court.

10 Shri Gunale has strenuously opposed the petition and has supported the impugned order. He submits that a stale claim has been dug out. The Labour Court has rightly rejected the applications. The disputed

issues have been raised by the Petitioners which are beyond the scope of the Labour Court. The gratuity and provident fund cannot be claimed in an application under Section 33-C(2) of the Industrial Disputes Act, 1947.

11 Shri Gunale indicates from the affidavits in reply filed by the Management in both these petitions, that the calculation and computation of the monthly salary cannot be adjudicated upon by the Labour Court. The issue of entitlement will have to be decided first and the Labour Court is not empowered to decide the same. He submits that the Petitioners should have brought on record adequate evidence to support their demands.

12 He further submits that the salary payable to equally situated employees was paid to the Petitioners. The factory was closed down due to drought situation. 25% of the wages were being paid during the period when the factory was closed. The claim is illegal and unsustainable. He, therefore, prays that the petitions be dismissed.

13 I have considered the submissions of the learned Advocates for the respective sides as have been noted herein above. The Respondent/ Management by its SAY on the application seeking production of documents had opined that those documents are relevant and should be

produced. It is obvious that non production of documents has virtually defeated the claim of the Petitioners. These documents could have been placed on record by way of proper assistance to the Labour Court which could have adjudicated upon the claims put forth by the Petitioners. This, therefore, is one such ground on which the applications need to be remanded.

14 The claim of the Petitioners to the extent of provident fund and gratuity cannot be entertained by the Labour Court. The Petitioners are at liberty to raise such claims under the relevant Acts before the competent forum/ authority, which is not the Labour Court under Section 33-C(2). As such, on remand, the Labour Court shall not consider these claims of the Petitioners.

15 I find from the impugned judgments that the Labour Court has discussed the evidence. It could have drawn an adverse inference against the Respondent/ Management for not producing such documents which would have assisted the Labour Court in deciding the claims of the Petitioners. The Labour Court has not even concluded as to whether, the wages due to the Petitioners have been paid and whether, there cannot be recovery of any amount from the Management. It needs no discussion that if the workers have worked with the Employer, the payment of wages is a

legal obligation cast on the Employer and in the light of the claim under Section 33-C(2) the Employer can demonstrate as to whether, the wages have been paid or not. This aspect has been lost sight of by the Labour Court.

16 In the light of the above, the impugned judgments dated 21.11.2013 delivered in Application (IDA) Nos.10/2012 and 12/2012 are quashed and set aside. Both the applications are remitted back to the Labour Court for a fresh adjudication in the light of the above observations.

17 Both the parties are at liberty to adduce additional evidence before the Labour Court which shall consider the evidence already recorded as well as the additional evidence while deciding the applications.

18 The issue of delay raised by the Management also needs to be gone into. This issue is kept open for the Labour Court to decide the same in accordance with law.

19 Needless to state, all the contentions of the litigating sides are kept open except the issue of gratuity and provident fund and the Labour

Court shall decide both the applications on their own merits.

20 Both the sides are agreeable to appear before the Labour Court on 21.08.2015 and therefore, the Labour Court need not issue seperate notices to the litigating sides.

21 Accordingly, the Writ Petitions are partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)