

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1356 OF 2014

Tuljabhavani Nivasi Apang Karyashala
Vasarni, Tq. Nanded,
Through Managing Superintendent
Poonam Eknath Toradmal (Jatale)
Age-33 years, Occu-Managing Superintendent,
R/o Vasarni, Tq. and Dist. Nanded

PETITIONER

VERSUS

1. Social Welfare Officer, Class-A,
Zilla Parishad, Nanded,
 2. Udaygiri Yuvak Mitra Mandal
Navandi, Tq.Udgir, Dist.Latur,
Through Maroti Sakharam Chavan,
Nivasi Apang Vidyalaya,
Junakantha Road,
Kales Wada Kantha,
Post.Cidco, Tq. And Dist.Nanded.
 3. Kailash Ramrao Gunjawale,
Age-37 years, Occu-Labour,
R/o Vasarni, Tq. and Dist.Nanded
- RESPONDENTS

WITH

WRIT PETITION NO.1360 OF 2014

Zilla Parishad, Nanded,
Through its Social Welfare Officer,
Class-A,
Shri Sunil Nageshrao Khamitkar,
Age-36 years, Occu-Social Welfare Officer,
Class A, R/o C/o Zilla Parishad, Nanded

PETITIONER

VERSUS

1. Tuljabhavani Nivasi Apang Karyashala
 Vasarni, Tq. Nanded,
 Through Managing Superintendent,
 Poonam Eknath Toradmal (Jathale)
 Age-33 years, Occu-Managing Superintendent,
 R/o Vasarni, Tq. And Dist.Nanded.

2. Udaygiri Yuvak Mitra Mandal
 Navandi, Tq.Udgir, Dist.Latur,
 Through Maroti Sakharam Chavan,
 Nivasi Apang Vidyalaya,
 Junakantha Road,
 Kales Wada, At Kantha,
 Post.Cidco, Tq. And Dist.Nanded.

3. Kailash Ramrao Gunjawale,
 Age-37 years, Occu-Labour,
 R/o Vasarni, Tq. and Dist.Nanded

RESPONDENTS

Mr.S.B.Ghatol Patil, Advocate for respondent No.1
 (Petitioner in W.P.No.1360/2014)
 Mr.Shrikant S.Patil, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/08/2015

ORAL JUDGMENT :

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

2. The petitioner in the first petition is the Educational Institution and the petitioner in the second petition is the Zilla Parishad, Nanded. Both these petitions are directed against the judgment and order dated 13/11/2013 delivered by the Labour Court in Appl. (IDA)

No.12/2010. Both the petitioners were respondent Nos. 1 and 2 in the said application preferred by respondent No.3 / employee herein seeking recovery of money due from an employer, u/s 33(C)(2) of The Industrial Disputes Act, 1947.

3. The petitioners and the respondents being party to the said proceeding before the Labour Court and since both the petitioners are aggrieved by the same judgment of the Labour Court, I am hearing these two petitions together.

4. The petitioners are before this Court primarily on two grounds. Firstly, that the original applicant before the Labour Court had not reported for work from 21/07/2007 till 21/12/2007, which is a period of 5 months. His wages for the said period are, therefore, not payable. Secondly, both the petitioners did not participate in the proceedings before the Labour Court and the matter proceeded ex-parte as against them resulting in the impugned judgment.

5. Grievance of both the petitioners is that they failed to participate in the proceedings owing to certain difficulties and as such were unable to present their case before the Labour Court. It is, therefore, prayed that the impugned judgment is likely to result in

a miscarriage of justice since the applicant employee had not worked for 5 months and the Labour Court has granted wages for the said duration with interest @ 12%. Both, therefore, pray for a remand.

6. Mr.Patil, learned Advocate appearing on behalf of applicant/respondent No.3, submits that a report was placed before the Labour Court. It indicated that the investigation carried out by the Social Welfare Officer clearly established that the applicant/employee had worked for the said period. The Management did not forward the monthly salary bills in relation to the applicant and hence he was not paid his monthly wages.

7. He, therefore, submits that even if the matter is remanded and the petitioners are permitted to participate in the proceedings before the Labour Court, there is no possibility of the Labour Court arriving at a different conclusion in the light of the statutory record indicating that the applicant had worked during the said period.

8. I have considered the submissions of the learned Advocates. It cannot be disputed that respondent Nos. 2 and 3 before the Labour Court had failed to participate in the proceedings on account of their negligence and laxity. They could have been diligent and could have

rendered assistance to the Labour Court by appearing at the appropriate time. It is stated that the Enquiry Report of the 3 member committee dated 10/08/2009 is the basis of the claim of the applicant.

9. It, however, cannot be overlooked that these petitioners were unable to controvert the said report as they had failed to appear in the said proceedings. There is a likelihood that the concerned employee would have to suffer hardships and rigours of litigation in the event of a remand, which can be softened by permitting the applicant to withdraw 50% of the amount. This Court, by its order dated 13/02/2014, had directed the petitioners to deposit 50% of the amount in this Court, which has been done on 17/07/2015 after a passage of 1 year and 5 months.

10. Considering the above and the conduct of the petitioners, though I am inclined to remand the proceedings so as to have the application of the applicant being decided after a contest, it would be appropriate to direct the petitioners to deposit the remaining 50% of the amount within a period of 6 (six) weeks from today as a precondition for participating in the proceedings.

11. In the light of the above, these petitions are partly allowed. The impugned judgment of the Labour Court dated 13/11/2013 delivered in Appl.(IDA) NO.12/2010 is quashed and set aside only for the purpose of enabling these petitioners to participate in the said proceedings. Appln. (IDA) No.12/2010 is remitted to the Labour Court for fresh adjudication.

12. I, therefore, issue the following directions :-

- a. The petitioners shall deposit the remaining amount equal to 50% as assessed by the Labour Court inclusive of the interest @ 12% before the Labour Court, within a period of 6 (six) weeks from today.
- b. The amount deposited in this Court on 17/07/2015 shall be withdrawn by respondent No.3 / applicant from this Court.
- c. The said applicant shall file an undertaking before the Labour Court that in the event, his claim is not sustained before the Labour Court and subject to his legal remedies available in law, he shall deposit / return the said amount to the petitioners within a period of 3 months thereafter.
- d. The petitioners shall file their written statement before the Labour Court only after depositing the residual amount as directed above.
- e. In the event the said amount is not deposited, the impugned judgment of the Labour Court shall stand restored and the petitioners will therefore not be permitted to participate in the said proceedings, which would stand concluded.

- f. After depositing the amount and filing of the written statement, the Labour Court shall recast issues and permit the litigating sides to lead additional evidence.
 - g. The evidence recorded earlier by the Labour Court shall not be discarded.
 - h. The litigating sides shall appear before the Labour Court on 23/09/2015. Formal notices need not be issued.
 - i. The Labour Court shall endeavour to decide the application (IDA) NO.12/2010, as expeditiously as possible, and preferably on or before 05/03/2016.
13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)