

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3926 OF 2013

1. THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DIVISION,
OLD AUSA ROAD, LATUR,

2. THE EXECUTIVE ENGINEER,
MEDIUM PROJECT DIVISION, LATUR

PETITIONERS

VERSUS

MARATHWADA PATBANDHARE VA YANTRIKI
KAMGAR SANGHATNA,
NONDANI KRAMANK 1120, GODAWARI NIWAS,
OPP. SUTMIL, LATUR,
THROUGH GENERAL SECRETARY

RESPONDENT

Mr.S.D.Dhongade, Advocate for the petitioners.
Mr.K.M.Nagarkar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/07/2015

ORAL JUDGMENT :

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

2. The petitioners are aggrieved by the judgment and order dated 18/10/2012 delivered by the Labour Court, Latur in Appl. (IDA) No.20/2001, which was filed by the respondent / Union u/s 33(C)(2) of the Industrial Disputes Act, 1947.

3. Contention of Mr.Dhongde, learned Advocate for the petitioners is that pursuant to the devastating earthquake that took place on 30/09/1993 affecting two areas known as Killari and Sastur in Dist. Latur, the petitioners had deployed several workers in the rehabilitation operation. He does not dispute that workers had worked day in and day out in the said areas.

4. He submits that as a recognition of the hard work done by such employees, the State Government introduced a Government Resolution dated 13/01/1997 vide which monetary incentive @ 20% of the basic salary was to be paid to all such employees, who had worked in the earthquake affected areas. The specific eligibility criteria for payment of such incentive was that the employee must have actually worked in the rescue operations in the earthquake affected areas.

5. The respondent Union had preferred Application (IDA) NO.20/2001 invoking Section 33(C)(2) of the I.D.Act on behalf of 1097 members of the applicant /Union mentioned in the schedule. The amounts claimed were also mentioned in the said Schedule.

6. Mr.Dhongde indicates from paragraph No.1 of the written statement below Exh.C-5 filed before the Labour Court by the petitioners that the concerned members of the respondent / Union have never worked in the rescue/rehabilitation operations and were never deployed for the same. Their claim for earthquake allowance from 01/07/1994 till 31/12/1997 for 42 months was unsustainable. He, therefore, submits that the conclusions of the Labour Court that 'because the petitioners did not produce any evidence, all the members of the applicant / Union mentioned in the schedule are entitled for earthquake allowance', is an unsustainable conclusion.

7. Mr.Nagarkar, learned Advocate for the respondent / Union has strenuously supported the impugned order. He submits that 1097 members mentioned in the schedule had worked from 01/07/1994 till 31/12/1997 for about 42 months. They are entitled for the benefits of the Government Resolution. The petitioners have extracted work from them. When the time came to make the payments, the petitioners have turned away and are now making an unsustainable claim that the persons mentioned in the schedule before the Labour Court are not entitled for the earthquake allowance.

8. He submits that this petition be dismissed and the petitioners be directed to deposit the amount of Rs.1,01,94,398/- as is claimed by the respondent/Union. He demands interest as is granted by the Labour Court.

9. I have gone through the petition paper book and the affidavit in reply filed by the respondent with the assistance of the learned Advocates. There is no dispute that the concerned Government Resolution dated 13/01/1997 has introduced the earthquake allowance. It is also not in dispute that there are certain clauses mentioned in the said Government Resolution which lay down the eligibility criteria.

10. The bone of contention is as regards the claim made by 1097 employees and the denial of the petitioners that they were ever deployed in the rescue and rehabilitation operations or that specific orders were issued to them.

11. After going through the impugned judgment, I find that both the litigating sides have not led proper evidence in support of their contentions. When the respondent/Union was making a claim of earthquake allowance and that too under Section 33(C)(2) of the

I.D.Act, the Labour Court was not expected to resort to a roving enquiry in the matter. The respondent/Union should have led evidence on the basis of the documents to show that 1097 employees had actually worked in the rehabilitation programme. Notice for production of documents was not issued to the petitioners so as to compel the petitioners to produce the relevant documents before the Court.

12. Similarly, it is apparent that the petitioners were complacent and failed to adduce oral and documentary evidence so as to establish as to which were the employees who were deployed in the rescue/rehabilitation work. The petitioners did not do so and after the impugned judgment was delivered, appears to have realized the effect of not adducing proper evidence.

13. The conclusions of the Labour Court in paragraph Nos. 9 and 10 appear to have been drawn on assumptions and presumptions. Merely because the witness of the petitioners stated in his cross examination that the Government Resolution provides for earthquake allowance, it could not have led the Labour Court to conclude that the petitioners have admitted the claim of the respondent. Surprisingly, the Labour Court has concluded that "*The respondents*

have not produced any documentary evidence to prove this aspect. Therefore the entire members of applicant/Union given in Schedule attached to application are entitled for earthquake allowance as per the aforesaid Government Resolutions. Therefore, this Court has jurisdiction”.

14. I am unable to agree with such conclusions. If the Union failed to produce any evidence before the Court to support its claim and no notice for production of documents was issued to the petitioners/employer, it was a foregone conclusion that the claim was not proved. When the claimant itself did not produce any evidence, the Labour Court should have refrained from arriving at the above quoted conclusion.

15. Notwithstanding the above, the claim of the respondent employees deserves to be scrutinized properly since many of them may have actually worked in the rehabilitation programme. If proper evidence is brought before the Labour Court, it would be assisted to arrive at sustainable conclusions. However, Mr.Nagarkar submits that no orders were issued by the petitioner to any member of the Union while allotting rehabilitation work to them.

16. It is in the above circumstances that I am of the view that both the litigating sides be relegated to the Labour Court for leading proper evidence. The petitioners are equally under an obligation to produce such orders before the Court which would indicate as to which of the members of the respondent/Union had worked in the rehabilitation programme. The respondent is at liberty to file a notice for production of documents to ensure that the necessary documentary evidence is brought before the Court.

17. As such, this petition is partly allowed. The impugned judgment and order dated 18/10/2012, delivered by the Labour Court in Application (IDA) No.20/2001 is quashed and set aside. The said proceedings are remitted back to the Labour Court.

18. The litigating sides shall appear before the Labour Court on 24/07/2015. Separate notices need not be issued to them by the Labour Court. Both the litigating sides are at liberty to lead additional oral and documentary evidence. The Labour Court shall consider the earlier evidence recorded and further evidence brought before it while deciding Application (IDA) No.20/2001 on its own merits.

19. The litigating sides have assured co-operation and shall refrain from seeking adjournments on unreasonable grounds before the Labour Court. The Labour Court shall decide the application as early as possible and preferably on or before 02/01/2016.

20. Rule is partly made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)