

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9035 OF 2012
WITH
CIVIL APPLICATION NO.6085 OF 2014

Abhay S/o Narayan Avhad,
Age-41 years, Occu-President,
Parth Vidya Prasarak Mandal,
Pathardi, Tq.Pathardi,
Dist. Ahmednagar

PETITIONER

VERSUS

Babasaheb Manik @ Manku Lakde,
Age-57 years, Occu-Advocate,
R/o Fule Nagar, Pathardi, Tal.Pathardi,
Dist.Ahmednagar

RESPONDENT

Mr.A.N.Kakade, Advocate for the petitioner.
Mr.G.B.Rajale, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/07/2015

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the impugned judgment and order dated 13/06/2012 delivered by the Labour Court in Appl. (IDA) No.36/2005.

3. Mr.Kakade, learned Advocate for the petitioner strenuously submits that a frivolous claim was put forth by the respondent u/s 33(C)(2) of The Industrial Disputes Act, 1947 (For Short, the Act) alleging unpaid salary by the petitioner Parth Vidyaprasarak Mandal, which is an Educational Institution. Since the respondent had arrayed the petitioner by name, the same cause title has been set out in this petition. In fact, the claim of the respondent is against the Education Institution.

4. He further submits that the Center named as Sant Gadgebaba Audyogik Prashikshan Kendra had become dysfunctional from 2000 onwards. It did not have any students strength from 1998 and was practically not functioning. No work was available to be performed by the respondent and therefore there was no question of paying him any salary. Yet, the respondent raised a plea of unpaid salaries from September 1998 to 15/07/2001.

5. Mr.Kakade further submits that a vague and ambiguous claim was put forth by the respondent and the Labour Court has entered into a roving enquiry by considering the ambiguous claim. The impugned judgment indicates that the Labour Court has travelled beyond its jurisdiction and has partly allowed the claim of the respondent. The reasons assigned by the Labour Court are based on assumptions and

presumptions. Mathematical calculations have been made by the Labour Court, which is beyond its jurisdiction. He, therefore, vehemently submits that the impugned judgment deserves to be quashed and set aside.

6. Mr.Rajale, learned Advocate for the respondent employee confirms that his claim is against the Institution and not against an individual. He has arrayed the petitioner by name but the claim of the respondent is to be recovered from the Institution since he was working with the Institution as an employee and not with the petitioner in his personal capacity.

7. He further submits that he has set out a specific claim which is properly narrated from paragraph No.2 of his application. He had earlier preferred Writ Petition No.3492/2002 against the Institution for recovery of unpaid salary. By order dated 26/03/2003, the learned Division Bench of this Court refused to grant any relief by holding that the respondent could approach the Civil Court for recovery of an unpaid salary.

8. He, accordingly, preferred RCS No.174/2003, which was subsequently withdrawn in order to tender his claim before the Labour Court, which was a proper Forum. His application for withdrawal of the

suit was allowed by the learned Trial Court by order dated 14/09/2005, considering his request for approaching the Labour Court. It is, in these circumstances, that he approached the Labour Court and preferred his application.

9. He has drawn my attention to the conclusions of the Labour Court from paragraph No.10 onwards, which are based upon the oral and documentary evidence. He submits that the Labour Court has arrived at a finding on facts and has granted an amount which was calculated by the Court. The said amount has been deposited in this Court by D.D.No.928869. He, therefore, submits that the petition be dismissed and interest be imposed upon the amount to be paid by the petitioner.

10. I have considered the submissions of the learned Advocates and the documents placed on record. It is trite law that the Labour Court cannot resort to a roving or fishing enquiry while dealing with a claim u/s 33(C)(2) of the Act. Nevertheless, it need not be a pre-decided claim. It only has to be based on an existing right. Calculating the unpaid amounts and for the said purpose resorting to mathematical calculations, is not prohibited and is well within the jurisdiction of the Labour Court.

11. The respondent had claimed an amount of Rs.3,39,015/- as unpaid salary. By the impugned order, he was granted an amount of Rs.2,09,276/-. He has not challenged the said judgment.

12. The respondent had filed an application under the Right to Information Act requesting for certain documents pertaining to his salary. The petitioner could not establish severing of employer/employee relationship between the Management and the respondent. The petitioner never terminated the respondent, who succeeded in establishing that he had worked for the period referred above and for which he was not paid his salary. The respondent, therefore, had an existing right which was fortified by the documents supplied to him by the petitioner.

13. The Labour Court has considered all the documents received by the respondent from the petitioner Management and has analyzed them in paragraph No.13 of the impugned judgment. I have gone through the same and find it to be convincing. Several documents as regards the basic salary of the respondent, the rate at which he was entitled for dearness allowance, Form No.3-A which was submitted to the Office under the Employees Provident Fund and Misc.Provisions Act, 1952, all indicated the factum of work performed by the respondent. It was, therefore, an obligation cast on the petitioner to indicate that the said

amount of salary had been paid. The petitioner had taken a stand that the respondent had never worked, which was disproved through the oral and documentary evidence.

14. In the light of the above, I do not find that the impugned judgment and order could be termed as being perverse or erroneous. This petition is devoid of merit and is, therefore, dismissed.

15. The amount of Rs.2,09,276/- deposited by the petitioner shall be withdrawn by the respondent with accrued interest. Needless to state, it was under fortuitous circumstances that the petitioner is arrayed in his personal capacity when the claim of the respondent was against the Institution. As such, it is the Institution which is liable to pay the said amount. Hence the petitioner is at liberty to seek reimbursement of the said amount from the said Institution namely Parth Vidya Prasarak Mandal, Pathardi.

16. Rule is discharged.

17. Pending civil application does not survive, hence disposed of.

(RAVINDRA V. GHUGE, J.)