

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7597 OF 2015

Vijaya Shankar Saraf,
Age-64 years, Occu-Pensioner,
R/o Afugalli, Raver,
Tq. Raver, Dist.Jalgaon

PETITIONER

VERSUS

Zilla Parishad, Jalgaon,
Through its Chief Executive Officer,
Tq. and District Jalgaon

RESPONDENT

Mr.V.B.Anjanwatikar, Advocate for the petitioner.
Mr.M.S.Sonawane, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/09/2015

ORAL JUDGMENT :-

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

2. The petitioner is aggrieved by the judgment and order dated 02/03/2015 delivered by the Industrial Court in Complaint (ULP) No.47/2009.

3. The petitioner had preferred complaint (ULP) No.47/2009 before the Industrial Court invoking Item Nos. 6, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. Grievance was

that salary towards “Leave without pay” should be paid, leave encashment, gratuity, difference of pay and commutation of pension should also be paid. The Industrial Court has dismissed the complaint on the ground that there was no evidence put forth by the petitioner to support the claims, barring Exhibit U-11, which was the affidavit in lieu of examination-in-chief filed by the petitioner.

4. Mr.Anjanwatikar, learned Advocate for the petitioner frankly submits that the petitioner had no idea about bringing documentary evidence on record. She was not advised to prefer a notice for production of documents so as to ensure the production of relevant records, which are exclusively in the custody of the respondent, He, therefore, prays for a remand in the light of the peculiar fact that the complaint has been dismissed since the petitioner adduced her oral evidence and did not rely upon the service book and the statement of pay and allowances, which were placed before the Industrial Court.

5. Mr.M.S.Sonwane, learned Advocate on behalf of the respondent has strenuously supported the impugned judgment. He submits that several claims made by the petitioner could not have been entertained by the Industrial Court and hence the complaint was rightly dismissed.

6. He submits that issues pertaining to gratuity and commutation of pension were not tenable before the Industrial Court. The claim for salary in connection with leave without pay was also untenable since the petitioner was granted leave without pay for certain duration making it evident that she was not entitled for wages. She enjoyed the leave without pay and hence cannot be permitted to claim wages for such leave. He, therefore, prays that this petition deserves to be dismissed.

7. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

8. Firstly, the petitioner could not have raised the claim for wages with regard to leave without pay. Once she has availed of leave, she could not make such a claim. The petitioner had taken a stand before the Industrial Court that the "leave without pay" that was granted, was subsequently cancelled and she was granted "leave with pay". However, she did not produce any evidence before the Industrial Court to substantiate this claim.

9. Secondly, the claim for difference in gratuity and commutation

of pension could not have been gone into by the Industrial Court. Legal remedies are available to the petitioner in relation to her claim for gratuity and commutation of pension, under different Acts.

10. It is quite evident that the complainant has not taken sufficient efforts to bring documentary evidence before the Industrial Court. The service book and the statement of pay and allowances, as were supplied by the respondent to the petitioner and which were produced by the petitioner on record, do not appear to be proved in the Industrial Court. Hence, these documents have not been referred to by the Industrial Court.

11. Nevertheless, since the petitioner has retired and issues as regard difference in leave encashment and difference in pay need to be dealt with lest she would be rendered remediless, that I am inclined to remit the complaint to the Industrial Court for a decision only on these issues.

12. In the light of the above, this petition is partly allowed. The judgment and order dated 02/03/2015, delivered by the Industrial Court, Jalgaon is quashed and set aside. Complaint (ULP) No.47/2009 is remitted to the Industrial Court for fresh decision on

the following conditions :-

- (a) The litigating sides shall appear before the Industrial Court on 23/09/2015. Formal notices need not be issued by the court.
- (b) The petitioner shall deposit an amount of Rs.5,000/- (Rs.Five thousand only) on the said date of appearance before the Industrial Court as costs, which shall be withdrawn by the respondent.
- (c) The Industrial Court shall not consider the issues pertaining to gratuity, commutation of pension and provident fund, as the petitioner would be at liberty to avail of legal remedies for the said purposes and the time spent by the petitioner before the Industrial Court and this Court shall be a good ground for condonation of delay.
- (d) Both the litigating sides are granted the liberty to lead additional, oral and documentary evidence.
- (e) The Industrial Court shall endeavour to decide the complaint as expeditiously as possible and preferably on or before 30/04/2016.

13. Rule is made partly absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)