

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 8223 OF 2014

Shri. Saibaba Sansthan Vishwasta
Vyavastha, Post Shirdi, Tq. Rahata,
Dist. Ahmednagar.

Through its Executive Officer. ...Petitioner...

Versus

Mohan S/o Eknath Kote
Age : 51 years, Occu : Service,
R/o Kote Vasti, Shirdi,
Post. Shirdi, Tq. Rahata,
Dist. Ahmednagar.

...Respondent...

.....

Shri. Vikram R. Dhorde, Advocate for petitioner.

Shri. Parag V. Barde, Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 07.12.2015.

ORAL JUDGMENT :

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

2] The petitioner is aggrieved by the judgment and order dated 25.2.2014 by which Complaint (ULP) No.52/2010

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filed by the respondent was partly allowed.

3] Shri V.R. Dhorde, learned Advocate for the petitioner, submits that two issues were raised by the respondent. One was with regard to unpaid wages for the period 21.7.2007 till 17.7.2010. The second issue was that the respondent had claimed increments from 1995 till 2010.

4] Shri V.R. Dhorde points out the specific pleadings of the respondent in paragraph no.3(D) of the complaint. He then points out the specific reply submitted by the petitioner in paragraph no.13 of its written statement, which is self-explanatory.

5] The contention of the petitioner was that the respondent was not reporting for duties from 27.7.2007 to 18.7.2010 since he was transferred by order dated 21.7.2007 from the Security Department to the Inquiry Department.

6] He further submits that the Industrial Court has declined wages to the respondent for the period 27.7.2007 to 18.7.2010 and the respondent has not challenged the impugned judgment of the Industrial Court to that extent. The conclusions on this aspect have, therefore, attained

finality.

7] Shri V.R. Dhorde submits that the respondent was placed under suspension from 20.4.1988 pending disciplinary proceedings. He continued to be under suspension till the disciplinary authority issued the order of punishment by way of suspension for four days from 3.5.2004 till 6.5.2004. Since the respondent was under disciplinary proceedings and suspension during this period and has been subsequently punished for proved misconducts, he is dis-entitled for claiming increments for the period when he was under suspension pending disciplinary proceedings and more so when the charges are proved and he has been punished. This aspect has not been dealt with by the Industrial Court in the impugned judgment. On this count alone, the impugned judgment deserves to be set aside.

8] The petitioner further points out that the Industrial Court has arrived at a conclusion in paragraph no.11 that *"The complainant is entitled for due increments either from 1995 or 1997."* He further points out from the operative part of the impugned judgment Clause 3 wherein the Industrial Court directs the

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petitioner to release increments within one month.

9] He, therefore, submits that the Industrial Court has not come to a conclusion as to whether the increments were due from 1995 to 1997 or whether they became due and payable from 1997. On this count as well, he prays for the quashing of the impugned judgment.

10] Shri P.V. Barde, learned Advocate on behalf of the sole respondent, has strenuously tried to defend the impugned judgment. On the one hand, he concedes that the respondent has not challenged the rejection of his prayer clause (C) praying for wages from 21.7.2007 till 17.7.2010. On the other hand, he submits that once the Industrial Court has come to a conclusion that the increments are due either from 1995 or 1997, the better benefit has to be made available to the employee. The impugned judgment, therefore, has to be favourably interpreted in the interest of the respondent - employee and hence the increments should be paid from 1995.

11] I find from the respective pleadings of the litigating sides that the issue as to whether the respondent was entitled for increments for the period when he was under suspension and facing disciplinary

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proceedings, was to be adjudicated upon. This aspect has been totally ignored by the Industrial Court while granting increments to the respondent.

12] The specific pleadings of the petitioner in paragraph no.13 are germane to the cause of action put forth by the respondent - employee and the Industrial Court could not have ignored the said contentions. Similarly, the Industrial Court should have come to a conclusion that the increments were payable from a particular date. It could not have left it ambiguous by concluding that the increments are payable either from 1995 or 1997.

13] In the light of the above, this petition is allowed. The conclusion of the Industrial Court rejecting prayer clause (C) of the complaint is sustained as there is no challenge to the same. The impugned judgment is, therefore, set aside only to the extent of granting of increments either from 1995 or 1997 till 2007.

14] I, therefore, pass the following order:-

A] Complaint (ULP) No.52/2010 is remitted back to the Industrial Court, Ahmednagar, for decision

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only on the following issues :-

[i] Whether the respondent - original complainant is entitled for increments from 1995 till 19.4.1998 ?

[ii] Whether the respondent - complainant is entitled for increments for the period 20.4.1998 till 6.5.2004 ?

[iii] Whether the respondent - complainant is entitled for increments from 7.5.2004 till 26.7.2007 ?

B] Complaint (ULP) No.52/2010 shall be decided by the Industrial Court only to the extent of the above mentioned three issues.

C] Both the learned Advocates submit that the litigating sides shall appear before the Industrial Court on 21.12.2015. Formal notices need not be issued by the Industrial Court.

15] Rule is made absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)