

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3072 OF 2015

Sadanand Raghunath Makasare,
Age-58 years, Occu-Nil,
R/o Laxmiwadi, Janata Balwadi,
At Post - Sawale Vihir Budruk,
Taluka Rahata, Dist.Ahmednagar

PETITIONER

VERSUS

Maharashtra State Road Transport Corporation,
Ahmednagar Division, Sarjepura, Kothla,
Ahmednagar
Through its Divisional Controller

RESPONDENT

Mr.P.V.Barde, Advocate for the petitioner.
Mr.B.S.Deshmukh, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/12/2015

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 award dated 02/11/2012 delivered by the Labour Court by which Ref.(IDA) NO.22/2010 has been answered in the negative.
3. The petitioner has also challenged the order dated 27/08/2014

by which Misc.Ref.(IDA) No.1/2013 filed by the petitioner has been rejected. I have dealt with this issue in my order dated 09/12/2015.

Paragraph Nos. 1 to 3 of the said order read as under :-

“1. The petitioner has assailed the judgment and award dated 02/11/2012 by which Ref.(IDA) No.22/2010 was disposed of without any adjudication as the petitioner was absent. He is also aggrieved by the order dated 27/08/2014 by which Misc.Appl.(IDA) No.1/2013 was rejected.

2. The impugned award was published by the Labour Court on 10/04/2013. Misc.Application was filed by the petitioner on 30/08/2013 which is beyond 30 days from the date of publication of the award. The Labour Court has rejected the Misc. Application on the ground that it has become functus-officio.

3. This Court has considered the view taken by the Apex Court and has delivered a judgment in the matter of Dnyaneshwar S/o Anantrao Kulkarni, Osmanabad Vs.Supt.Engineer, Public Work Division, Osmanabad and others, 2015(3) CLR 81. No interference is, therefore, called for in the said order dated 27/08/2014.”

4. In the light of the above, this petition is, therefore, restricted to the challenge of the petitioner as against the award dated 02/11/2012.

5. Mr.Barde, learned Advocate for the petitioner submits that the

award is an outcome of the petitioner having failed to lead evidence before the Labour Court. He concedes that he may not have been vigilant in prosecuting the reference. However, the Labour Court should have granted some more opportunity to the petitioner considering the fact that the statement of claim was filed on 05/08/2010 and the written statement of the respondent / Corporation was filed on 25/11/2010.

6. He further submits that a valuable right to challenge his removal from service has been lost, no doubt, because the petitioner was not vigilant. One opportunity may be granted to the petitioner and he can be put to such terms as this Court may deem proper.

7. Mr.Deshmukh, learned Advocate for the respondent / Corporation has strenuously opposed this petition. He submits that the petitioner has been sleeping over his rights. The law does not assist a sleeping litigant. Misc. Application for setting aside the ex-parte award was filed on 30/08/2013 when the award was published by the Labour Court on 10/04/2013. Even the order dated 27/08/2014 passed by the Labour Court has been challenged in this petition which was filed on 30/09/2014 and was circulated belatedly.

8. Mr.Deshmukh, therefore, submits that this petition deserves to be dismissed and the petitioner does not deserve any sympathy.

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

10. There is no dispute that the reference has been answered in the negative, not on its merits, but on account of the absence of the petitioner. It is also undisputed that the Labour Court has delivered the award since the petitioner failed to remain present for leading oral evidence.

11. Be that as it may, it is apparent that the Reference was answered in the negative within two years of the institution of the reference proceedings. It cannot be said that the proceedings were pending for a long time and despite enormous opportunities to the petitioner, he did not prosecute the reference.

12. The case of the petitioner before the Labour Court was with regard to his termination dated 27/11/2000. One opportunity with certain conditions can be granted to the petitioner so as to enable him to challenge his termination.

13. In the light of the above, this petition is partly allowed. The impugned award dated 02/11/2012 is quashed and set aside and Ref. (IDA) No.22/2010 is remitted to the 2nd Labour Court at Ahmednagar with the following directions :-

- [a] The litigating sides shall appear before the 2nd Labour Court or the Court to which this matter is allotted on 08/01/2016.
- [b] The Labour Court shall permit the litigating sides to lead oral and documentary evidence and decide the reference on its own merits.
- [c] The petitioner shall not seek adjournments on unreasonable or trivial grounds and the Labour Court would be at liberty to reject such adjournment applications and proceed with the matter.
- [d] In the event the petitioner succeeds before the Labour Court and is granted monetary benefits keeping in view that the petitioner has attained the age of superannuation, he shall be deprived of monetary benefits for the period from 02/11/2012 till the date of this order.

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

(RAVINDRA V. GHUGE, J.)