

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10380 OF 2014

Deogeri Nagari Sahakari Bank Ltd.,
Arth Complex, Kesharsinghpura,
Adalat Road, Aurangabad,
Through : Its Authorized Signatory,
Shri Datta Madhavrao Shinde,
Age-42 years, Occu-Service,
R/o Aurangabad

PETITIONER

VERSUS

Nilesh Sitaram Kale,
C/o B.D.Patil, T-36, Dishat Nagari,
Beed By-pass Road, Satara Parisar,
Aurangabad

RESPONDENT

WITH
WRIT PETITION NO.10381 OF 2014

Deogeri Nagari Sahakari Bank Ltd.,
Arth Complex, Kesharsinghpura,
Adalat Road, Aurangabad,
Through : Its Authorized Signatory,
Shri Datta Madhavrao Shinde,
Age-42 years, Occu-Service,
R/o Aurangabad

PETITIONER

VERSUS

Nitin Arjun Kharat,
Age-Major, Occu-Service,
R/o C/o Anant Z.Indasrao,
A-4/72, N-7, CIDCO,
Aurangabad

RESPONDENT

WITH
WRIT PETITION NO.10382 OF 2014

Deogeri Nagari Sahakari Bank Ltd.,
Arth Complex, Kesharsinghpura,

PETITIONER

Adalat Road, Aurangabad,
Through : Its Authorized Signatory,
Shri Datta Madhavrao Shinde,
Age-42 years, Occu-Service,
R/o Aurangabad

VERSUS

Ganesh Eknath Sarag,
Age-Major, R/o Jay-Malhar Nivas,
4-16-73, Kotwalpura,
Mill Corner, Near Adarsh Laundry,
Aurangabad

RESPONDENT

WITH
WRIT PETITION NO.10383 OF 2014

Deogeri Nagari Sahakari Bank Ltd.,
Arth Complex, Kesharsinghpura,
Adalat Road, Aurangabad,
Through : Its Authorized Signatory,
Shri Datta Madhavrao Shinde,
Age-42 years, Occu-Service,
R/o Aurangabad

PETITIONER

VERSUS

Prashant Saluji Sadaphule,
Age-Major, Occu-Service,
R/o House No.B-32, Shivshankar Colony,
Near Old Aurangabad Municipal Water Tank,
Aurangabad

RESPONDENT

Mr.S.S.Vidwauns, Advocate for the petitioner.
Mr.P.M.Shinde, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/11/2015

ORAL JUDGMENT :

1. On 11/03/2015, when this Court heard the learned Advocates

for the petitioner and the respondents, the following order was passed.

“1. Both the learned Advocates for the petitioner and the respondents submit that they have no objection if this Court hears these matters.

2. Issue notice before admission to the respondents. Shri Shinde learned Advocate waives service for all the respondents in all these matters. By consent of the parties, stand over 26-03-2015.

3. Both the learned Advocates, request for a final hearing at the admission stage since the issue involved is as regards recovery of amount from the employer.

4. In all these petitions, by the impugned judgments, the Labour Court has partly allowed the claim of the respondents under Section 33 (C) (2) of the Industrial Disputes Act, 1947. However, both the learned Advocates jointly submit that the Labour Court has not concluded the amount to be paid by the petitioner to the respondent/employees. Both the learned Advocates further submit that they will have to calculate the effect of the impugned judgments in order to arrive at the amount which is allowed by the Labour Court.

5. In the light of the above, since these matters are likely

to be heard finally on 26-03-2015, the petitioner shall deposit an amount of Rs. 50,000/- (Rs. Fifty thousand) in each of these cases in this Court on or before the 23rd day of March, 2015.

6. *Both the parties shall calculate the amount which is allowed by the Labour Court and place the calculations on record before the next date of hearing by filing their short affidavits.*

7. *In the light of these directions, the respondents shall not resort to coercive steps for the implementation of the impugned judgments.”*

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

3. Pursuant to the order dated 11/03/2015, the petitioner has deposited an amount of Rs.50,000/- in each of these petitions in this Court on 23/03/2015.

4. The petitioner is a Bank in all these petitions. All the respondents had preferred Application (IDA) Nos.22/2009, 23/2009, 30/2010 and 24/2009 u/s 33(C)(2) of The I.D.Act before the Labour Court at Aurangabad. 4 issues were raised by the respondents

before the Labour Court which are as follows :-

- [a] Bonus at the rates claimed by the respondents was not paid to the said employees.
- [b] Difference in salary on the basis of a settlement dated 04/08/2004 was not paid to the respondents.
- [c] The petitioner had unauthorizedly withdrawn Rs.5,000/- per respondent without authorization for charity.
- [d] Provident fund contributions were not paid by the petitioner in the P.F.Accounts of the respondents.

5. The petitioner is aggrieved by the identical judgments delivered by the Labour Court on 31/05/2014 in Application (IDA) No.22/2009, 3/6/2014 in Application (IDA) No.23/2009, 05/06/2014 in Application (IDA) No.30/2010 and 04/06/2014 in Application (IDA) No.24/2009 respectively.

6. The petitioner has contended that the bonus payable to similarly situated employees was for a maximum amount of 20% of the basic and D.A. earned as per the Bonus Act. During the course of the submissions of the learned Advocates, the petitioner submits that the bonus as was paid to identically situated employees as like the respondents at the relevant time and at the relevant rate, can be paid by the petitioners.

7. This issue, therefore, needs to be settled here itself. The petitioner shall, therefore, calculate the said amount and make the said payment with simple interest @ 6% from the date it became payable to the respondents within a period of 45 days from today. Needless to state, the liberty which this Court would be granting to the respondents to prefer an appropriate proceeding in relation to the settlement dated 04/08/2004, would also include any grievance of the respondents with regard to insufficient bonus being paid under the orders of this Court.

8. Mr.Shinde, learned Advocate for the respondents has strenuously supported the impugned orders. Issue of bonus is put to rest by the order of this Court in the light of the foregoing paragraphs. I am unable to agree with Mr.Shinde that non payment of provident fund contributions under the E.P.F. and M.P. Act, 1952 could be an issue covered u/s 33(C)(2) of the I.D.Act, so as to include such failure to pay contributions under the 'recovery of money due from the employer'. The claims of the respondents, therefore, before the Labour Court to the extent of seeking payment of provident fund contributions under the 1952 Act, would not be covered u/s 33(C)(2) of the I.D.Act, 1947.

9. The other claim of the respondents before the Labour Court was with regard to unauthorized deductions of Rs.5,000/- from the monthly stipend / wages of the respondents as being unsustainable as the same was carried out without any authorization. The petitioner is unable to justify this deduction of Rs.5,000/- without authorization from any of the respondents.

10. There has been no evidence recorded before the Labour Court to point out specific authorization being issued by the respondents permitting the petitioner to deduct Rs.5,000/- from their wages for the purpose of charity. So also, there is no settlement on record permitting such deduction signed between the petitioner and the approved Union of the respondents under the B.I.R.Act, 1946. I am therefore, directing the petitioner to refund the amount of Rs.5,000/- with simple interest @ Rs.6% from the date the said amount was deducted by the petitioner. This amount with interest shall be refunded to the respondents within a period of 45 days from today.

11. In the light of the above, the only issue which both the sides have seriously contested pertains to the settlement dated 04/08/2004.

12. I have considered the submissions of the learned Advocates.

13. The contention of the petitioner is that this settlement dated 04/08/2004 has been signed between the petitioner Bank and the Union representing it's members. The disputed issue is that the petitioner contends that this settlement was never made applicable to the temporaries, trainees or probationers since it is a long term settlement applicable to the regular employees of the Bank and members of the Union from 01/04/2004 till 31/03/2008.

14. Per contra, the contention of the respondents is that as the word "all employees" has been used in Marathi in the said settlement, it would include even the temporaries, trainees and probationers.

15. The undisputed factors with regard to this settlement dated 04/08/2004 are that the respondents were temporary employees on 04/08/2004, were not the members of the Union which signed the settlement, the said Union was not an approved Union under the B.I.R. Act, 1946 and the respondents were entitled to a stipend per month.

16. The issue before this Court is whether a seriously disputed

aspect of applicability of a settlement can be a subject matter of adjudication u/s 33(C)(2) of the I.D.Act, 1947. Section 33(C)(2) reads as under :-

“Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; ¹ within a period not exceeding three months:] ² Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]”

17. It is not in dispute that the respondents were appointed as temporaries, trainees as on the date of settlement and were granted a stipend of Rs.2,000/- each per month. In contradistinction, the settlement revised the various pay structures of the employees inclusive of basic wages, dearness allowances, house rent allowance, vehicle allowance, medical allowance, city allowance etc. The persons covered by such restructured wage scales have been set out on page no.3 of the settlement. Prima facie, it is not seen from the settlement

that the temporaries, trainees or probationers who were appointed with specific stipends, were also included in a regular pay scale, which is payable normally to the permanent employees.

18. Mr.Shinde has relied upon the judgment of this Court in the matter of Force Motors Ltd. Pune Vs. Shantilal Hukumchand Sancheti and another, 2011(3) Mh.L.J. 90. I have considered the said judgment delivered by this Court. The ratio laid down is apparently not applicable to the instant case.

19. In the Force Motors Case (supra), a settlement dated 30/04/1993 was signed. The respondent/workman was dismissed on 07/08/1982 and was reinstated under the directions of the Court w.e.f. 23/04/1993 with full back wages. It was, therefore, concluded that since the employee was reinstated to the original position of a permanent employee, he was automatically covered under the settlement and hence the benefits flowing from the settlement were squarely applicable and payable to him. This Court, therefore, concluded that an incidental enquiry which does not involve a complicated question and is of merely calculating the money payable to the respondent/employee was rightly gone into by the Labour Court u/s 33(C)(2).

20. In the instant case, the respondents do not dispute that they were temporaries on the date of the settlement, were not members of the Union which signed the settlement and were appointed under specific orders as temporaries with specific stipend of Rs.2,000/- per month.

21. In the above backdrop, a seriously disputed issue as to whether the settlement is in itself applicable to a temporary employee, could not have been gone into by the Labour Court u/s 33(C)(2).

22. In the light of the above, these petitions are partly allowed. The impugned judgments delivered by the Labour Court are modified as under :-

- [a] The respondents are at liberty to raise an issue under the E.P.F. and M.P.Act, 1952 as regards unpaid provident fund contributions before the competent Provident Fund Authorities within a period of 90 days from today.
- [b] Bonus as directed by this Court in the foregoing paragraphs shall be payable by the petitioner to the respondents with interest as directed within a period of 45 days from today at the rates they are payable to identically situated employees.
- [c] Amount of Rs.5,000/- (deducted) with simple interest as directed above shall be paid by the petitioner to the respondents within 45 days from today.

- [d] The respondents are at liberty to file appropriate proceedings either under Item 9 of Schedule IV of the MRTU and PULP Act, 1971 as regards whether the settlement dated 04/08/2004 covers the respondents and whether they are entitled for the wage structuring and difference in wages provided thereunder, within a period of 45 days from today.
- [e] In the event such a proceeding is preferred within 45 days, the time spent by the respondents before the Labour Court in their 33(C)(2) applications and before this Court shall be a ground for condonation of delay.
- [f] Grievance of the respondents with regard to the bonus to be paid may also be raised in such a complaint, if their grievance persists after payment as per clause (b) above.
- [g] An amount of Rs.25,000/- per respondent from the amounts deposited in this Court shall be transmitted by the Registry of this Court to the Industrial Court at Aurangabad within 60 days from today considering that the respondents have been given the liberty to file proper complaints before the Industrial Court within 45 days, as observed above.
- [h] This amount shall be invested in a fixed deposit in a Nationalized Bank till the complaint is decided by the Industrial Court.
- [i] The rest of the amount with accrued interest shall be withdrawn by the petitioner from this Court.

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

(RAVINDRA V. GHUGE, J.)