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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11800 OF 2014

- 1 The State of Maharashtra.
Through it's Secretary,
Irrigation Department,
Mantralaya, Mumbai.
- 2 The Superintending Engineer,
Minor Irrigation Division,
(Local Sector), Tryambak Bhavan,
Nashik, Taluka & District Nashik.
- 3 The Executive Engineer,
Minor Irrigation, Sinchan Bhavan,
Aurangabad Road, Ahmednagar.
Taluka and District Ahmednagar.
- 4 The Executive Engineer,
Kukadi Irrigation Division No.2,
Shrigonda, Taluka Shrigonda,
District Ahmednagar.

...PETITIONERS

-VERSUS-

Sudam s/o Maruti Kshirsagar,
Age : 55 years, Occ : Service,
R/o House No.152, Teli Galli,
Shrigonda, Taluka Shrigonda,
District Ahmednagar.

...RESPONDENT

....

Smt.VA.Shinde, AGP, for the Petitioners/ State.

Shri V.P.Golewar, Advocate, for the Respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st July, 2015

Oral Judgment:

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

2 The Petitioners have brought before this Court a peculiar case. The Respondent/ Employee was appointed as a “Chowkidar” in 1982 in the office of the Petitioners' Department. His services were dispensed with in 1991. He raised an industrial dispute with regard to his termination and which was referred to the Labour Court and registered as Reference (IDA) No.132/1992. By the judgment and award dated 25.06.1998, the reference was allowed by directing the Petitioners to reinstate the Respondent/ Employee with continuity of service and full back-wages from 29.10.1991.

3 The Respondent preferred Complaint (ULP) No.1/1999 before the Industrial Court seeking implementation of the award dated 25.06.1998. It is the case of the Petitioners that the Respondent executed an undertaking on 06.11.2000, which is sworn before the competent authority (registered Notary). By the said undertaking, he declared that he

would not claim any back-wages from the date of termination till the date of his reinstatement. He has also sworn in the said affidavit that he will not raise any dispute as regards the back-wages.

4 It is the case of the Petitioners that the Respondent filed a purshis dated 11.07.2002 before the Industrial Court below Exhibit U/11 by which he sought permission of the Industrial Court to withdraw the complaint unconditionally. The Industrial Court by it's order dated 11.07.2002 has granted the said purshis. The complaint was, therefore, disposed of.

5 The Petitioners submit that Complaint (ULP) No.210/2013 was then filed by the Respondent/ Employee in which he has made a grievance that his full back-wages from the date of termination dated 29.10.1991 till his reinstatement has not been paid to him. He has also claimed the benefits of Converted Regular Temporary Establishment (for short "CRTE") with effect from 29.10.1996. By the judgment and order dated 15.04.2014, impugned in this petition, the Industrial Court allowed the said complaint and held the Petitioners guilty of Unfair Labour Practices and directed the Petitioners to pay the entire back-wages and difference of pay and allowance from 29.10.1991.

6 The Petitioners submit that after Complaint (ULP) No.1/1999 was withdrawn on 11.07.2002, the Respondent/ Employee was taken on CRTE w.e.f. 1996 by the order dated 01.08.2002. Since the financial burden was reduced and the Respondent agreed to waive the back-wages, the Petitioners did not raise any challenge to the award dated 25.06.1998. Having assured the Petitioners that no financial benefits would be sought and they are being waived, the Petitioners did not pursue any challenge to the award and have granted the benefits of CRTE to the Respondent from 1996 onwards.

7 The Petitioners further point out that the Respondent had preferred Writ Petition No.6169/2011 which was decided by this Court on 24.09.2013. The petition was dismissed by observing that this Court cannot investigate into the aspect as to whether, the purshis was signed under duress and whether, the signatures were taken on the blank papers. Disputed questions cannot be gone into. However, this Court has recorded that *“No plausible explanation is coming forth for not challenging the same (the order of the Industrial Court allowing the withdrawal purshis on 11.07.2002) for 09 years.”*

8 The learned AGP then draws my attention to the reasons assigned by the Industrial Court while delivering the impugned judgment.

The Industrial Court has concluded that the Respondent is an illiterate person and he is not expected to understand the contents of the affidavit, the words are not flowing from his mouth and that by showing his willingness to forgo the back-wages, does not mean that the award should not be implemented.

9 The Petitioners criticize the conclusions of the Industrial Court on the ground that because the Respondent waived the entire monetary burden which was on the shoulders of the Petitioners, they did not choose to challenge the award and virtually have settled the matter by implementing the award to the extent of reinstatement of the Respondent and by taking him on CRTE from 1996. It is, therefore, submitted that if the entire award of the Labour Court is to be implemented de-hors the affidavit undertaking and purshis, the Petitioners could have very well challenged the award.

10 It is further submitted that no efforts were made by the Respondent to approach the same Court to indicate that Complaint (ULP) No.1/1999 was not voluntarily withdrawn and therefore, the same be revived. Having withdrawn the complaint, the second complaint after 11 years was not maintainable. It is, therefore, submitted that the impugned judgment and order be quashed and set aside.

11 Shri Golewar, learned Advocate on behalf of the Respondent/ Employee, has strenuously opposed the petition. His contention is that the Respondent was in need of employment. He was under pressure from the Petitioners. He has signed on blank papers and has not signed on the affidavit which was sworn before the Notary, State of Maharashtra.

12 Shri Golewar further submits that the purshis Exhibit U/11 dated 11.07.2002 was not filed voluntarily. In short, he submits that the signatures on the blank papers have been misused by the Petitioners and fraudulently the complaint before the Industrial Court has been withdrawn. He, therefore, submits that Complaint (ULP) No.210/2013 has been correctly filed and the impugned judgment calls for no interference.

13 From the contentions of the parties as recorded herein above, it is apparent that a peculiar issue has been raised before this Court. The Respondent has not lodged any police complaint as regards the affidavit undertaking dated 06.11.2000 setting out a ground that his signatures on the blank papers have been utilized for fraudulently getting an affidavit executed. It is not the case of the Respondent that he has initiated any appropriate action against the Executive Engineer or Notary or witnesses to the affidavit, on this count.

14 The purshis Exhibit U/11 is filed before the Industrial Court. A copy of the certified copy of the purshis is placed before this Court. The signatures of the learned Judge as well as the Assistant Registrar of the Industrial Court on the certified copy are visible. It is also not disputed that the purshis is exhibited as Exhibit U/11. In my view, the presumption is that the learned Judge of the Industrial Court has granted the purshis only after due verification.

15 The issue, therefore, is as to whether, the Respondent/ Employee could be said to be under duress or whether, the signatures of the Respondent/ Employee were fraudulently used on the affidavit undertaking and the purshis. The presumption while allowing the purshis is that the Respondent was before the Industrial Court when it passed its order granting the purshis and permitting the Respondent to withdraw the complaint. If that be so, then the issue is as to why did the Respondent not inform the learned Judge that he is not aware of the contents of the purshis and his signatures on the blank papers have been fraudulently utilized. It is noteworthy that the affidavit undertaking as well as the purshis are in Marathi.

16 There could be another way of testing of the veracity of the

statement of the Respondent. Even if it is presumed that the Respondent is aggrieved by non payment of the back-wages, there is no evidence brought before the Industrial Court to indicate that the Respondent made any effort to find out the stage in Complaint (ULP) No.1/1999. There is no evidence to indicate that he had pursued his Advocate representative in the case. There is no evidence to indicate that he had visited the Court to find out the status of the said complaint.

17 Complaint (ULP) No.210/2013 was filed on 21.12.2013 after this Court dismissed the petition filed by the Respondent. The issue is as to whether, the Respondent ever tried to pursue the Petitioners seeking implementation of the award dated 25.06.1998. Writ Petition No.6169/2011 has been preferred sometime in June-July, 2011. If at all the signatures of the Respondent on blank papers were fraudulently utilized for the purpose of the affidavit undertaking and the purshis, the lodging of the petition in 2011 would indicate that it is almost 11 years after the undertaking is executed and it is after 09 years of the filing of the purshis, which led to the withdrawal of Complaint (ULP) No.1/1999.

18 None of the above aspects have been considered by the Industrial Court while delivering the impugned judgment. The first issue which deserves adjudication was, whether, Complaint (ULP) No.210/2013

could be maintained when Complaint (ULP) No.1/1999 was withdrawn. The second issue would be, whether, lapse of 09 years is fatal to the maintainability of the complaint filed in 2013. The third issue would be as to whether, Complaint (ULP) No.1/1999 could be restored provided that the Respondent prima facie proves that the affidavit undertaking and the purshis are documents which have been fraudulently created by the Petitioners.

19 Rather than going into these issues which were vital, the impugned judgment is delivered by the Industrial Court apparently without any application of mind. The Industrial Court has proceeded on the premise as if it was dealing with non implementation of the award dated 25.06.1998. I have, therefore, considered all these issues while deciding this petition.

20 The Petitioners have prayed for quashing and setting aside of the impugned judgment and have sought the dismissal of Complaint (ULP) No.210/2013. The Respondent submits that the matter be remitted to the Industrial Court for a fresh adjudication, so that it would give the Respondent an opportunity to establish the issues which have been considered by this Court in this judgment.

21 The issue involved is about the service benefits and the benefits of CRTE which are available to the Respondent. It cannot be overlooked that the Petitioners did not challenge the judgment and award of the Labour Court dated 25.06.1998 during the pendency of Complaint (ULP) No.1/1999 apparently because the Respondent convinced the Petitioners that he was waiving all the monetary benefits till the date of his reinstatement. On the said basis, the complaint is withdrawn. This, therefore, amounts to striking an arrangement between two sides whereby the Petitioners implemented the award without challenging it in this Court only because the Respondent/ Employee waived all the back-wages and monetary benefits flowing through the award. His silence over a period of 09 years is conspicuous. The doctrine of “acceptance sub-silentio” squarely applies to this case. If the complaint is to be remanded to the Industrial Court and if the issue 13 years old is to be dug out, then, liberty is required to be given to the Petitioners to challenge the award dated 25.06.1998 after passage of about 17 years.

22 I find that the silence of the Respondent for 09 years is apparent and conspicuous. He first secured his reinstatement and also ensured that the Petitioners did not challenge the award before the High Court. He then acquired the order of CRTE dated 01.08.2002 which was given effect to from 1996. After settling into employment and having

acquired practically all the major benefits under the service conditions, the Respondent then rose to challenge the denial of back-wages in 2013 on the ground that the affidavit undertaking and the pursis have been manufactured by the Petitioners.

23 The Apex Court, in the case of *Kishore Samrite v/s State of Uttar Pradesh* reported in **(2013) 2 SCC 398**, has observed in strict words that a litigant should not be permitted to play mischief for seeking benefits from the Court.

24 Considering the fact situation noted above in its totality, I am not inclined to remit Complaint (ULP) No.210/2013 to the Industrial Court for a re-hearing.

25 As such, this petition is allowed. The impugned judgment and order dated 15.04.2014 delivered by the Industrial Court in Complaint (ULP) No.210/2013 is quashed and set aside. The complaint stands dismissed.

26 Nevertheless, the reinstatement of the Respondent on 01.08.2002 and having been taken on CRTE w.e.f. 1996, would sufficiently safeguard the long term interest of the Respondent as his

seniority would depend on the date of his name being entered on CRTE.

27 Rule is, accordingly, made absolute.

(RAVINDRA V. GHUGE, J.)