

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.261 OF 2014

1. Smt. Anita Dashrath Jadhav
Room No.18, 2nd Floor,
Kamgar Vasahat, Taluka Uran
Dist. Raigad
 2. Smt. Shamshad Airaza Sayed
2/B, Om Apartment,
2nd Floor, Uran Bazarpeth,
Taluka Uran, Dist. Raigad
 3. Smt. Sulochana Maruti Gaikwad,
House No.494, Uran Buddhawada
Taluka Uran,
District Raigad
- .. Petitioners.

V/s

1. Uran Municipal Council
Taluka Uran
District Raigad
2. Ms. Charushila Pandit
Chief Officer,
Uran Municipal Council
Taluka Uran
Dist. Raigad
3. Mr. Dilip P. Gharat
Administrative Officer

Uran Municipal Council
Taluka Uran
Dist. Raigad

4. Mr. Purushottam Bhapkar
Director of Municipal Administration
3rd Floor, Government Transport
Service Building, Sir Pochkhanwala
Marg, Worli, Mumbai.

5. Director of Municipal Administration
3rd Floor, Government Transport
Service Building, Sir Pochkhanawala
Marg, Worli, Mumbai

.. Respondents/
Contemnors.

Mr. L.A. Sawant, for petitioners.

Mr. Sachindra Shetye, for Respondent No.1.

Ms. Vaishali Nimbalkar, AGP, for State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 25th March, 2015

P.C. :

1. Petitioners No.1 and 2 are working as Tailoring Instructors with the respondents. Petitioner No.3 is working as Peon. They are the members of the Municipal Labour Union. In the year 1992, the Union filed Complaint (ULP) No.380 of 1992 in the Industrial Court for permanency in the employment with Respondent No.1. The complaint was withdrawn by the Union in view of the

resolution passed by the Respondent No.1 for grant of permanency. However, the Auditor of respondent No.1 took the objection for grant of permanency to the petitioners in the services of the Respondent No.1. Therefore, the Respondent No.1 by the notice dated 16th August, 2001 called upon the petitioners to show cause as to why the benefit of permanency be not withdrawn. Thereafter, petitioners filed the complaint being Complaint (ULP) No.373 of 2001 in the Labour Court at Thane. The Labour Court by its judgment and order dated 25th July, 2005 allowed the reference and directed respondent No.1 to pay the annual increments to the complainants from September, 2014 till the date of retirement. Respondent No.1 was further directed to pay the benefits of 6th Pay Commission and other legal dues and the monthly pension as per the rules of the respondents to the petitioners.

2. Being aggrieved by the order of the Labour Court, respondent No.1 filed Writ Petition No.5835 of 2012 in this court. By the order dated 01st March, 2013, this Court rejected the petition and directed it to forward the pension papers of the respondent No.2 therein and to ensure that pension is released within six months from the date of the order. This order was carried to the Apex Court,

unsuccessfully. Then review of the order was sought. The Review petition was also dismissed and the order dated 25th July, 2011 was confirmed. Thereafter, the petitioners instead of initiating proceeding for execution of the order dated 25th July, 2011, chose to file the present petition for contempt alleging that respondent No.1 has committed contempt by not complying with the order.

3. Respondent No.1 in it's affidavit-n-reply has claimed that the order of the Labour Court has been complied with. There is no dispute raised as regards the compliance in respect of petitioner No. 1 and Petitioner No.3. Though petitioner No. 3 who has since retired from service and his pension papers are directed to be forwarded for the purpose of release of pension, according to respondents, the Nagar Parishad had realised that employees have been taking double advantage as regards the pensionary benefits available under the Maharashtra Civil Services (Retirement Pension) Rules, 1982 and benefits available under the Payment of Gratuity Act, 1972. Therefor the Nagar Parishad has issued circular dated 30th December, 2005 directing that the retired employees will be entitled for the benefit under either of two statutes. That means, they will get benefit either under Maharashtra Civil Services (Retirement Pension) Rules, 1982

or under the Payment of Gratuity Act, 1972. The dispute now raised by the petitioners is about the payment to be made to petitioner No.2 who is claiming benefits under both the provisions.

4. It is obvious from the contempt petition that the petitioners are raising dispute about computation of benefits to be received as also the provisions under which benefits are to be received. Such disputes cannot be raised in the proceedings filed under the Contempt of Court Act.

5. In any case, the machinery for execution of the Labour Court order being available to the petitioners, they could not have resorted to the Contempt proceeding for that purpose. Mr. L.A. Sawant, the learned advocate for the petitioners relies upon the decision of the Apex Court in case of *Tayabbhai M. Bagasarwalla Vs. Hind Rubber Industries Private Limited, 1997 AIR (SC) 1240*, to submit that view taken by the Apex Court is that even an order passed by the Court without jurisdiction cannot be violated or allowed to be breached by a party and therefore, a party committing breach is liable to be punished for violation of the interim orders. There can be no dispute about the proposition of law. However, the decision cited is not applicable to the facts of the present case. In the

present case, there is remedy available to the petitioners for complying with the orders of the Labour Court. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)