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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4984 OF 2014

The Director General,
Yashwantrao Chavan Academy of
Development Administration ...Petitioner

V/s.
Smt. Parvati Baburao Hagvane ..Respondent

**WITH
WRIT PETITION NO. 1167 OF 2013**

The Director General,
Yashwantrao Chavan Vikas Prabhodini ..Petitioner

V/s.
Sau.Parvati Baburao Hagwane ..Respondent

**WITH
WRIT PETITION NO. 1168 OF 2013**

The Director General,
Yashwantrao Chavan Vikas Prabhodini . .Petitioner

V/s.
Sau. Ujwala Dattatray Chakankar ..Respondent

**WITH
WRIT PETITION NO. 1247 OF 2013**

The Director General,
Yashwantrao Chavan Vikas Prabhodini ..Petitioner

V/s.
Prahlad Nivrutti Bhujbal ..Respondent

**WITH
WRIT PETITION NO. 1257 OF 2013**

The Director General,
Yashwantrao Chavan Vikas Prabhodini ..Petitioner

V/s.
Suresh Dyaneshwar Hagwane ..Respondent

**WITH
WRIT PETITION NO. 1282 OF 2013**

The Director General, Yashwantrao Chavan Vikas Prabhodini V/s. Sau. Surekha Shankar Sutar	..Petitioner ..Respondent
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**WITH
WRIT PETITION NO. 1284 OF 2013**

The Director General, Yashwantrao Chavan Vikas Prabhodini V/s. Sau. Laxmi Amruta Dhumal	..Petitioner ..Respondent
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**WITH
WRIT PETITION NO. 1541 OF 2013**

The Director General, Yashwantrao Chavan Vikas Prabhodini V/s. Nandkumar Sitaram Padle	..Petitioner ..Respondent
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**WITH
WRIT PETITION NO. 5320 OF 2014**

The Director General, Yashwantrao Chavan Academy of Development Administration V/s. Sau. Surekha Shankar Sutar	..Petitioner ..Respondent
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**WITH
WRIT PETITION NO. 5886 OF 2014**

The Director General, Yashwantrao Chavan Academy of Development Administration V/s. Shri Pralhad Nivrutti Bhuj	..Petitioner .. Respondent
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**WITH
WRIT PETITION NO. 7223 OF 2014**

The Director General,
Yashwantrao Chavan Academy of
Development Administration ..Petitioner
V/s.
Smt.Ujjawala Dattatraya Chakankar .. Respondent

**WITH
WRIT PETITION NO. 7224 OF 2014**

The Director General,
Yashwantrao Chavan Academy of
Development Administration ..Petitioner
V/s.
Shri Suresh Dnyaneshwar Hagvane .. Respondent

**WITH
WRIT PETITION NO. 7225 OF 2014**

The Director General,
Yashwantrao Chavan Academy of
Development Administration .. Petitioner
V/s.
Shri Nandkumar Sitaram Padale .. Respondent

**WITH
WRIT PETITION NO. 7226 OF 2014**

The Director General,
Yashwantrao Chavan Academy of
Development Administration .. Petitioner
Vs.
Smt.Laxmi Amruta Dhumal .. Respondent

Mr. A.P.Vanarse, Advocate for the Petitioner.
Mr.A.S.Rao, Advocate for the Respondents.

**CORAM : R.G.KETKAR, J.
RESERVED ON : 03rd February, 2015
PRONOUNCED ON : 24th February, 2015**

P.C. :

. Heard Mr.A.P.Vanarse, learned Counsel for the petitioner and Mr.A.S.Rao, learned Counsel for the respondents in all the petitions at length. Rule. Mr. Rao waives service. At the request and by consent of the parties, rule is made returnable forthwith and the petitions are taken up for final hearing.

2. By these petitions under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the judgement and order dated 04/08/2012 passed by the learned Presiding Officer, Third Labour Court, Pune in Misc. Applications filed by the petitioner for setting aside exparte judgment and award dated 20/10/2005. By the impugned order, the applications made by the petitioner were dismissed. The petitioner has also challenged the order dated 06/03/2014 passed by the learned Member, Industrial Court, Pune in Complaints (ULP) Nos.264 to 270 of 2013. By that order, the Industrial Court directed the petitioner to either provide employment to the respondents or in alternate, pay them wages until further orders.

3. Since these petitions raise common questions of law and facts, the same can conveniently be disposed of by this common judgment. For the purpose of appreciating controversy between the parties, facts are taken from Writ Petition No. 4984 of 2014.

4. The respondent joined the services of the petitioner as a

gardener in 1996. Her services were terminated with effect from 13/01/1999. On 24/10/2000, the Deputy Commissioner of Labour, Pune, in exercise of powers under sections 10(1) & 12(5) read with section 2-A of the Industrial Disputes Act, 1947 (for short 'Act') made reference to the Labour Court over the following demands.

“That second party be reinstated on her original post with continuity of service and to pay full back wages during the intervening idle period.”

5. The respondent filed statement of claim. The petitioner was duly served with the notice of reference. The petitioner appeared in the proceedings, but failed to file written statement though sufficient chances were given. By order dated 28/02/2005, the reference proceeded without written statement of the petitioner. The respondent examined herself and reiterated the facts pleaded in the statement of claim. The respondent was not cross examined and her evidence remained unchallenged. The learned Judge of the Labour Court did not find any reason to disbelieve the testimony of the respondent and held that she was in the employment of the petitioner since 1996 as a gardener and completed 240 days service in each calender year. Her services were terminated with effect from 13/01/1999 without conducting domestic enquiry or without offering or paying retrenchment compensation. The respondent proved that her services were illegally terminated and is entitled to reliefs sought for. By the judgment and award dated 20/10/2005, the Labour Court directed the petitioner to reinstate the respondent on her original post

with continuity of service and to pay full back wages from the date of the termination till reinstatement. The petitioner was ordered to reinstate the respondent within 2 months from the date of the order.

6. On 10/04/2006, the petitioner filed application for setting aside exparte award dated 20/10/2005. Since there was delay in filing the application, the petitioner filed Misc. Application for condonation of delay interalia contending that it got knowledge of exparte award on 07/01/2006. By order dated 24/04/2009, the Labour Court condoned the delay subject to payment of costs of Rs.400/- to the respondent. The application for setting aside exparte award was thereafter tried on merits. The parties led evidence. The petitioner examined Jayant Hariharrao Pimpalgonkar in support of its case. He was also cross examined by the respondent. The respondent examined herself and was cross examined by the petitioner's advocate. By the impugned order, the application was rejected by the Labour Court. The respondent thereafter filed Complaint in the Industrial Court as the petitioner did not implement award dated 20/10/2005. By order dated 06/03/2014, the Industrial Court directed the petitioner to either reinstate the respondent or pay wages until further orders. It is against these orders, the present petition is instituted.

7. Initially, these petitions were heard before this Court on 26/03/2013 and prayer was made before this Court for withdrawal of

the applications filed for condonation of delay on the ground that no explanation was given for condoning the delay of 4 years. The petitions were withdrawn with a liberty to file fresh application for condonation of delay. It is relevant to note that by order dated 24/04/2009, delay was already condoned. This Court was thereafter moved for speaking to minutes of order dated 26/03/2013. The praecipe was disposed of on 30/04/2013 with a liberty to the petitioner to take out appropriate application, if it so desired. The petitioner, thereafter, filed Review Petitions for reviewing order dated 26/03/2013 passed in the above petitions. By order dated 25/11/2014, the order dated 26/03/2013 was recalled and all the petitions were restored to the file for hearing on merits.

8. In support of these petitions, Mr.Vanarse reiterated the submissions that were made before the Labour Court. He submitted that the petitioner had engaged advocate – Mr.Shripad Khurjekar on its behalf for representing in the reference. The said advocate kept the petitioner in dark as regards status of the matter. The Labour Court passed exparte award due to negligence of its advocate. The petitioner was diligent and was asking its advocate in writing about the status of the matter time and again. The applicant's advocate replied that there was no such case pending in the Labour Court. The petitioner relied upon advocate's letter. The petitioner, time and again, was in contact of its advocate who orally and telephonically

assured that the matter is in tact and petitioner need not worry about the matters.

9. The petitioner had sent letter dated 17/12/2005 to its advocate enquiring about status of the matter which was known to the petitioner as “Mali Kamgar Case”. The petitioner even went to the extent of informing its advocate that it had learnt that “Mali Kamgar Case” i.e. present case was decided against it. The concerned advocate was specifically asked about present status of the matter so as to take requisite step, if factually the case was decided against the petitioner. The letter was replied by advocate on 19/12/2005 stating therein that no other case of “Mali Kamgar Case” i.e. gardener is pending in the Labour Court. It was further set out in the reply that after perusing the original record, he was sending the information. He not only gave information about the status before the Labour Court, but also status before the Industrial Court. The said letter is misleading as there was no mention of “Mali Kamgar Case” in the Labour Court which was decided by the judgment and award dated 20/10/2005.

10. It was further submitted that if totality of the circumstances is considered, the petitioner had been very diligent and time and again was in contact with its advocate. It was the advocate who did not file written statement after making the same. The reference was not decided on merits and award was made on mere

technicalities. The petitioner is faced with a situation wherein it is liable to pay back wages to the respondent. Had the petitioner been granted an opportunity to cross examine the respondent, it would have got an opportunity to elicit the truth and to expose the false hood of the respondent. However, due to negligence of the advocate, opportunity was lost to the petitioner for no fault on its part, when it was constantly in touch with its advocate. The right to be heard was not granted to the petitioner. The ends of justice would be served, if exparte order is recalled and the reference is heard on merits.

11. Mr.Vanarse invited my attention to the application dated 10/04/2006 made by the petitioner for setting aside exparte award. He also invited my attention to the admission given by the respondent during her cross examination which is to the following effect.

“I am deposing on behalf of all respondents, who were second party in References. I have no knowledge, as to how applicant institute kept contract with Adv.Khurjekar during pendency of References in this Court. **I have no grievance for the hearing of both sides by the Court.**”

(emphasis supplied)

12. Relying upon the aforesaid admission, Mr.Vanarse submitted that respondent deposed on behalf of all the respondents who were second party in references that she has no grievance for hearing both sides in references. In other words, she has no objections for setting aside award dated 20/10/2005 thereby restoring the references. He, therefore, submitted that the Labour Court should have recalled order dated 20/10/2005 and restored the references

thereby giving opportunity to the petitioner to file written statement and participate in the references.

13. On the other hand, Mr.Rao supported the impugned orders. He invited my attention to the reply filed by the respondent opposing the application for recalling the order dated 20/10/2005 as also the evidence of Jayant Hariharrao Pimpalgaonkar who was examined on behalf of the petitioner as also the impugned orders. He submitted that the admission extracted herein above and relied by Mr.Vanarse was not in the context of recalling the impugned order and hearing the references afresh, but in the context of hearing of both sides in application filed for restoration. He submitted that the petitioner was negligent and therefore, no case is made out for invoking powers under Articles 226 & 227 of the Constitution of India.

14. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As is evident, the services of the respondent were terminated. The Deputy Commissioner of Labour, Pune made reference to the Labour Court. The respondent filed statement of claim. It is not in dispute that the petitioner was duly served with notice of reference. It is equally not in dispute that the petitioner appeared in the proceedings, but failed to file written statement. The Labour Court while deciding the reference on 20/10/2005 observed in paragraph 5 that the petitioner failed to file written statement though

sufficient chances were given. The reference proceeded without written statement against the petitioner by order dated 28/02/2005. The petitioner has come with the specific case that the petitioner had engaged advocate Mr.Shipad Khurjekar on its behalf for representing in the references. The said advocate kept the petitioner in dark as regards the status of the matter. The exparte award was made due to negligence of its advocate. The petitioner was diligent and was in constant touch with its advocate. The petitioner had sent a letter dated 17/12/2005 to its advocate enquiring about the status of the matter which was known as "Mali Kamgar Case". That letter was replied by its advocate on 19/12/2005 setting out therein that no other case of "Mali Kamgar Case" i.e. gardener was pending in the Labour Court. The petitioner even went to the extent of informing its advocate that it had learnt that "Mali Kamgar Case" i.e. present case was decided against it. The concerned advocate was specifically asked about present status of the matter so as to take requisite steps, if factually case was decided against it. In the reply, it was further set out therein that after perusing the original record, he was sending the information. He not only gave information about the status before the Labour Court, but also before the Industrial Court. The said letter is misleading as there was no mention of "Mali Kamgar Case" in the Labour Court which was decided by the judgment and award dated 20/10/2005. In order to substantiate this case, the petitioner

examined Mr. Jayant Hariharrao Pimpalgaonkar. The relevant portion of his cross examination reads as under :

'statement of claim filed by all the workers was received by the petitioner. After receipt of the statement of claim of workers, instructions were given to advocate of the Academy. The advocate of Academy did not file written statement in those cases. He could not tell as to why written statement was not filed on behalf of the Academy before the Labour Court. The Deputy Registrar of the Academy was in contact with advocate appointed by the Academy. The letter was not given to advocate as to why he did not prepare written statement of the Academy. The letter was issued to advocate as to what happened to cases against the Academy. No written letter was issued to the advocate regarding not filing written statement in Labour Court. The letter was issued to the advocate in the year 2006 (it seems to be typographical error and ought to be 2005) about status of the cases. The copy of the affidavit filed by the workers was not received by the Academy. The Academy received copy of the judgment in references passed by the opponent workers. He has perused the said order of the Court. The copies of the judgment in all 8 cases were received by the applicant. The applicant did not issue letter to the earlier advocate after receipt of copy of judgment regarding references filed by the workers.'

15. The Labour Court considered the material on record including evidence of Jayant Hariharrao Pimpalgaonkar. Mr.Pimpalgaonkar deposed that he did not peruse individual file of all workers and the Deputy Registrar of Academy was in contact with advocate Mr.Khurjekar. The petitioner did not adduce evidence of the concerned Deputy Registrar, Establishment clerk. In paragraph 9, it was observed that as a matter of fact, though the petitioner was aware of the pending reference against it, it did not file written statement for 5 years and therefore, the decision was given against the

petitioner. He could not tell as to why written statement was not filed. The letter was addressed to advocate on 17/12/2005 asking about the status of the matters. It was observed that the letter was issued after exparte award was made on 20/10/2005. In paragraph 10, it was observed that the petitioner is a government institute. There are various officers of higher cadres working in the institute. The person holding post of Deputy Registrar did not take care about references pending in the Labour Court against the Academy. The Academy received statement of claim, but it did not care to file written statement and contest the statement of claim. It shows that the petitioner was idle in respect of reference pending against it. It was not diligent. It had blamed its advocate Mr.Khurjekar. Though Vaklatnama was filed by advocate Mr.Khurjekar, the written statement was not filed by him. It was further observed that the petitioner had falsely contended about the false information given by Mr.Khurjekar.

16. The Labour Court also considered the letter dated 17/12/2005 referred by the witness. That letter was regarding matter pending in the **Industrial Court, Pune** against "Mali Kamgar Case". That letter was not in respect of the present reference. The letter was replied by Mr.Khurjekar on 19/12/2005 wherein he mentioned that **Complaint (ULP) No. 410 of 1998** was pending before the **Industrial Court** and that complaint was withdrawn. In other words, the information sought by the petitioner was in respect of complaint filed

under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'M.R.T.U & P.U.L.P Act") before the Industrial Court, whereas, the reference under the Industrial Disputes Act was pending before the Labour Court. The Labour Court, therefore, held that the petitioner was not diligent in prosecuting the references against it pending in the Labour Court. The petitioner also did not examine advocate Mr.Khurjekar to substantiate its assertion in respect of non-filing of written statement by advocate in the reference. The Labour Court, therefore, held that the evidence adduced by the petitioner did not prove the sufficient grounds and reasons to restore reference.

17. Mr.Vanarse submitted that the respondent has admitted during cross examination that she had no grievance for hearing of both sides by the Court. The said admission was also considered by the Labour Court in paragraph 10 of the impugned order. It was observed that the said submission was not acceptable because it had not been specifically asked to that witness that she has no grievance for the hearing of original reference. This admission can be interpreted in respect of these proceedings thereby meaning proceedings of Misc. applications for recalling exparte award.

18. The burden is on the petitioner to prove that it was diligently prosecuting the reference. It had appointed Mr.Khurjekar to represent it in the reference before the Industrial Court. The advocate

was negligent. He did not file written statement. In short, the petitioner has prayed for setting aside expare award only on the ground that its advocate was negligent and that it was throughout diligent. After considering the evidence on record and in particular, the evidence of petitioner's witness as also having due regard to the fact that the petitioner did not examine advocate Mr.Khurjekar and concerned Deputy Registrar, Establishment clerk, I do not find that the Labour Court committed any error in dismissing the application.

19. In the case of *Salil Datta Vs. T.M.and M.C. Private Ltd.*, (1993) 2 Supreme Court Cases 185, the Apex Court dealt with somewhat similar situation. The Apex Court considered its earlier decision in *Refiq Vs. Munshilal*, (1981) 2 SCC 788 and extracted paragraph 3 which reads as under:

"The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. **Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.**"

"..... The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or mis-demeanour of his agent. The answer obviously is in

the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. **However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."**

(emphasis supplied)

20. In the present case, the petitioner is a government Academy having its office at Pune. The proceedings were also pending in the Labour Court, Pune. The officers in-charge of the petitioner company are not rustic villagers nor they are innocent illiterate unaware of Court procedures. They are educated persons.

The Apex Court observed in paragraph 8 as under :

The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the Court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not.

But one thing is clear-they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

21. Having considered the material on record, I do not find that the petitioner was an innocent litigant. On the contrary, the petitioner has made allegations against its advocate that he gave misleading information. No advocate worth his salt would not file written statement, if it was prepared. The allegations against its own advocate are wholly unacceptable as the petitioner by letter dated 17/12/2005 sought information of complaint filed under the M.R.T.U & P.U.L.P. Act before the Industrial Court and the present references were tried before the Labour Court. The letter was also sent after the references were decided on 20/10/2005. It is also material to note that the petitioner did not produce on record any other written communication save and except letter dated 17/12/2005 which was addressed after making an exparte award on 20/10/2005. In the application for setting aside exparte award, it was asserted in paragraph 4 that "it was the advocate who has not filed the written statement **after making the same**". In fact, Mr.Pimpalgaonkar deposed in paragraph 1 of the cross examination that after receipt of the statement of claim of workers, instructions were given to advocate of Academy. Despite this position, the petitioner did not even produce

copy of the written statement either along with application for setting aside exparte award or through the witnesses. In the facts and circumstances of the present case, I am more than satisfied that the petitioner cannot ask any indulgence as it had put entire blame upon its advocate and tried to make out case as if it was diligent.

22. In view thereof, no case is made out for invocation of powers under Articles 226 & 227 of the Constitution of India. Hence, petitions fail and the same are dismissed.

23. Rule is discharged. In the circumstances, there shall be no order as to costs.

(R.G.KETKAR, J.)