

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6460 OF 1997
ALONGWITH
CIVIL APPLICATION NO. 1959 OF 2012

- | | |
|--|---|
| 1. B.Y. Kate (since deceased) |] |
| c/o Engineering & General Employees |] |
| Union, 334,H.R.D. Centre, |] |
| D. S. Phalke Road, Dadar,(East) |] |
| Mumbai 400 014 |] |
| 1a.Smt. Sulochana Balkrishna Kate |] |
| aged about 50 years |] |
| 1b. Pankaj Balkrishna Kate |] |
| aged about 19 years |] |
| 1c. Priyankar Balkrishna Kate |] |
| aged about 17 years |] |
| 1d. Staya Vijai Balkrishna Kate |] |
| (the applicant Nos.3 and 4 being minors |] |
| through their mother and natural guardian |] |
| Sulochana Balkrishna Kate, all residing at |] |
| Katewadi at and Post Savda Taluka Kankavali, |] |
| District Sindhudurg, Maharashtra) |] |
| 2. N. G. Khan (since deceased) |] |
| c/o Engineering & General Employees Union, |] |
| 334, H.R.D. Centre, D. S. Phalke Road, |] |
| Dadar(East), Mumbai 400 014 |] |
| 2a. Zubadabi wd/o Nabiyyar Khan Banekhan |] |
| 2b.Amjad Khan Nabiyyar Khan |] |
| 2c.Ahmed Khan Nabiyyar Khan |] |
| 2d.Shoeb Khan Nabiyyar Khan |] |

(all residing at Sarai, Fardapur,]
Taluka Soyagaon, District Aurangabad)]

3.Mr. K.O. Takwale (since deceased)]
Baburao Bhagat chawl, At & Post Diwa Station]
Dist.Thane]

3a.Sushila Krishna Takwale]
aged about 60 years, widow of]
late Krishna Takwale]

3b.Mahendra Krishna Takwale]
age 26 years, son of late Krishna Takwale]

3c.Santosh Krishna Takwale]
age 23 years, son of late Krishna Takwale]

(all residing at Baburao Bhagat chawl,]
At & Post Diwa Station, Dist.Thane)]

4. Mr. M. M. Ansari (since deceased)]
c/o Engg. & Gen. Employees Union, 334,]
H.R.D. Centre, D. S. Phalke Road, Dadar,(East)]
Mumbai 400 014]

4a. Ashabi wd/o Mohammed Musa]
Ansari, the Petitioner No.14]
abovenamed, residing at Mumbra Devi]
Pada, Maruti Buwaki chawl Room No.6,]
Mumbra]

4b. Banoo Rahim Khan,]
married daughter of Petitioner]
No.4 residing at Musakasam Chawl,]
District Thane]

4c. Khurshid Abdulla Shaikh]
residing at Mumbra Devi Pada, Maruti Buwaki]
chawl Room No.6, Mumbra.]

4d. Ruksana Bashir Shaikh]
married daughter of Petitioner]

No.4, residing Shahad Phatak Shahad,]
District Thane]

4e. Zainulla Abdidin Musa]
residing at Mumbra Devi Pada]
Maruti Buwaki Chawl Mumbra]

4f. Anwar]
residing at Mumbra Devi Pada]
Maruti Buwaki Chawl Mumbra]
(All abovenamed 4(a) to 4(f) are major]
and legal heirs of Mohammed Ansar, the]
petitioner No.4 abovenamed.)]

5.Mr. Govindas B. Kori]
Mashobha Nagar, Khambal Pada Road,]
Below Tata Power Tower,]
Thakurli(E), Dist.Thane]

...Petitioners.

:V/s:

1. M/s. Burlingtons Exports]
Plot No.B/75 Road No.Z/33,]
Wagle Industrial Estate,]
Thane-400 604]

2. Shri V.P.Patil,Presiding Officer,]
having his office at Arun Chambers,]
Tardeo, Mumbai 400 034]

...Respondents.

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Mr. N.M. Ganguli, Advocate for the petitioners.
Mr. R.S. Pai, Senior Counsel a/w. Mr. Hemant Telkar and Mr. Anand Pai
i/by. Haresh Mehta & Co., Advocate for respondent no.1.

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

9th July, 2015.

JUDGMENT :-

1). This petition arises out of the Award dated 23rd September, 1996 passed by the Labour Court, Mumbai on Reference (IDA) No. 547 of 1998 and the order dated 7th October, 1997 passed on the applications for review filed by the petitioner being Misc. Application (IDA) No. 58, 59, 60, 61 and 62 of 1997. By the order on the Reference, the Labour Court has directed the respondent to pay 75% backwages to the petitioners w.e.f. 31st March, 1978 to 16th March, 1988 alongwith full closure compensation treating the petitioners as in employment. This direction was given in view of the Memorandum of Settlement dated 15th May, 1980 under which the first term of settlement was that the services of the petitioners stood terminated by the respondent's order of declaration of closure dated 30th January, 1980 w.e.f. 16th March, 1980. The petitioners sought review of the order by filing separate Review Applications. The Labour Court rejected the same on the ground of its maintainability, as well as, on merit. The Labour Court has, on appreciation of the material on record, held that the charges against the petitioners are proved but the punishment of dismissal from service for these charges was disproportionate. The dismissal of the petitioners had taken place in the year 1978. According to the Labour Court, the appropriate punishment to the petitioners was denial of payment of

backwages to the extent of 25%.

2). Mr. Ganguli, the learned Advocate appearing for the petitioner submits that, in the subsequent proceedings of the year 2007, it has been accepted by the respondents that, the establishment of the respondent was not closed and that it was infact closed in the year 2007. According to the petitioner, this fact came to their knowledge in the year 2007. Any such claim made for the first time in this petition, cannot be accepted particularly in view of the Memorandum of Settlement dated 15th May, 1990. Mr. Ganguly, then submits that the petitioners could not have been deprived 25% of the backwages by way of punishment. According to him, there could be other minor punishment imposed upon the petitioners eg. punishment of warning etc. I find no substance in the submission. Since the respondent was already closed and the petitioners were only entitled to the dues, the punishment awarded of denial of 25% backwages is correct and appropriate in the facts of the case. The Rule is discharged. The petition is dismissed.

3). With the dismissal of the petition, the Civil Application does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)