

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

WRIT PETITION NO. 8635 OF 2014

Shri Madhav Ganesh Joshi and
Ors.

Petitioners

Vs

Gadre Bandhu

.. Respondent

Mr. Kuldeep U. Nikam, Advocate for petitioners.

CORAM : R.G.KETKAR,J.

DATE : 09/03/2015

PC:

1. Heard Mr. Kuldeep Nikam, learned counsel for the petitioners at length.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged (i) Judgment and order dated 5.9.2011, thereby, condoning the delay of 22 days in filing application for setting aside exparte Award; (ii) Judgment and order dated 4.1.2013 thereby setting aside exparte award dated 8.1.2010 passed in IDA No.4 of 2009 and (iii) Judgment and order dated 27.3.2014 passed by the learned Judge, Labour Court, Sangli, thereby, dismissing the application made by the petitioners under section 33-C(2) of the Industrial Disputes Act, 1947 (for short, "Act").

3. In support of this Petition, Mr Nikam submitted that the Labour Court was not justified in condoning the delay as no sufficient cause was made out. That apart, the respondent did

not make out reasonable ground for setting aside exparte order and finally the Labour Court misread the evidence on record in dismissing the application under section 33-C(2). He invited my attention to paragraphs 10 and 12 of cross examination of Mukund Gadre, one of the partners of the respondent. In paragraph 10 he admitted that in the past similarly situated workmen had instituted applications for leave wages. Those applications were allowed on 29.6.2001 and accordingly the respondent had deposited the amount in the Labour Court. He further admitted that the salary sheet showed that the petitioners were present on all 31 days and the entries made in the salary sheets are correct. Mr Nikam submitted that this admission clearly shows that no weekly off was given to the petitioners. They were also not paid any amount in lieu of not giving weekly off. He, therefore, submitted that the petition requires consideration.

4. I have considered the submissions advanced by Mr Nikam. I have also perused the material on record. By order dated 5.9.2011, the Labour Court condoned the delay of 22 days in filing the application for setting aside exparte award. The Labour Court considered the case made out by the respondent that he was suffering from mental ailment. Having regard to the fact that the delay was only of 22 days, the Labour Court condoned the delay subject to payment of costs of Rs.1000/- each to be paid to

the petitioners. I, therefore, do not find that the Labour Court committed any error in condoning the delay, more so having regard to shortness of delay.

5. As far as challenge to the order dated 4.1.2013 by which the exparte award was set aside is concerned, in paragraph 7, the Labour Court noted that it was not disputed that acting partner of the respondent-firm is an old person and is suffering from illness. In order to give fair opportunity of hearing so that order can be passed on merits, the Labour Court set aside exparte order and directed that the proceedings be completed within one month. The order is purely discretionary as also was passed in order to do substantial justice between the parties. I, therefore, do not find that it requires to be interfered with.

6. Lastly, by order dated 27.3.2014, the Labour Court dismissed the application filed by the petitioners under section 33-C(2) of the Act. The petitioners had restricted their claim towards wages of weekly off. In paragraphs 9 and 10, the Labour Court considered the admissions given by the petitioners in cross examination that they had taken weekly off during their respective services. In paragraph 10, the Labour Court also considered that the petitioners admitted that they were having weekly off every Tuesday or Friday or as per convenience of the parties. They also further admitted that they had taken weekly off. The Labour Court, therefore, came to the conclusion that

having taken weekly off, they cannot demand wages for the same. Admissions given by the petitioners go to the root of the application.

7. Mr. Nikam submitted that witness of the respondent admitted that the salary sheets show that complainants were working for 31 days in a month. In other words, they did not avail weekly off. At the same time, they were also not paid wages in lieu of not giving weekly off. Perusal of paragraph 12 of cross examination of the witness examined by the respondent shows that he volunteered and stated that the days shown in the salary sheets were inclusive of weekly off. I, therefore, do not find that the Labour Court committed any error in that regard.

8. As far as the submission based on paragraph 12 of cross examination of the witness examined by the respondent is concerned, it is undoubtedly true that some of the workmen had filed applications before the Labour Court and those applications were allowed. However, having regard to the evidence on record and in particular admissions of the petitioners as also the evidence of respondent that the days shown in the salary sheets were inclusive of weekly off, I do not find that the Labour Court committed any error in rejecting the application under section 33(C)(2). In view thereof, it cannot be said that the findings recorded by the Labour Court are perverse, being based on no evidence or that they are contrary to evidence. No case is made

out for invocation of powers under Articles 226 and 227 of the Constitution of India. The Petition fails and the same is dismissed.

(R.G.KETKAR, J.)