

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAW) NO. 620 OF 2015

AND

CIVIL APPLICATION (CAW) NO. 1033 OF 2015

IN

WRIT PETITION NO. 1397 OF 2009.

(MAHINDRA AND MAHINDRA LTD...VS..GANESH KSISHNARAO PAONIKAR & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.B.Puranik, Advocate for Petitioner.
Mr. M.V.Mohokar, Advocate for Respondent Nos.1 to 6.
Ms M.N. Hiwase, A.G.P. for Respondent No.7.

CORAM : Z.A.HAQ, J.

DATED : JUNE 30, 2015.

Heard.

2. Civil Application No. 620 of 2015 has been filed by the respondent No.5/employee praying that the petitioner/employer be directed to provide work to the respondent No.5/ employee as per the impugned order passed by the Industrial Court.

3. Civil Application No. 1033 of 2015 has been filed by the respondent No.1/employee praying that the petitioner/ employer be directed to pay the amount of arrears of wages of the respondent No.1 as per the impugned order passed by the Industrial Court.

4. Mr. Mohokar, the learned advocate for the respondent No.1 has submitted that this Court has admitted the petition for final hearing, however, interim order, which

was granted earlier, has not been continued while admitting the petition and therefore, the petitioner/ employer is under obligation to comply with the order passed by the Industrial Court. In paragraph 6 of the Civil Application No.620 of 2015 it is stated that the petitioner/ employer has conferred permanency on employees junior to the respondent No.1 and the respondent No.1 is being discriminated and has not been provided the work inspite of adjudication by the Industrial Court in his favour. The respondent No.1 has also given names of three employees who are junior to the respondent No.1 according to him.

5. Mr.Puranik, the learned advocate for the petitioner/ employer has submitted that the respondent No.1 was in employment with Husnoor Shikshan Sanstha, Nagpur during the period he was not in the employment of the petitioner. It is submitted that the respondent No.1 suppressed these facts before the Industrial Court and also before this Court and therefore, he is not entitled for any interim discretionary orders. In support of this submission he has relied on the judgment given by the Hon'ble Supreme Court in the case of *Dalip Singh Vs. State of Uttar Pradesh & oth.*, reported in **(2010) 2 SCC 114**. It is further submitted that the respondent No.1 had filed Civil Application No. 107 of 2012 praying that the petitioner/ employer be directed to grant permanency as per the impugned order passed by the Industrial Court and that application was not pressed in view of the joint pursis filed by the petitioner and the respondent No.1 on which the order came to be passed by this Court on 8th August, 2014. It is further submitted that the respondent No.1 had filed Civil Application No.555 of 2013 seeking permission to file contempt proceedings against the petitioner

and this application was also not pressed in view of the above referred joint pursis. It is submitted that in view of the fact that Civil Application No.107 of 2012 and Civil Application No.555 of 2013 were not pressed by the respondent No.1, the respondent No.1 cannot be permitted to make grievance as made in the present application and seek same relief.

6. As far as contentions of the respondent No.1 that the petitioner has conferred permanency on three junior employees is concerned, the learned advocate for the petitioner has pointed out from the reply filed on behalf of the petitioner that those junior employees stand on a different footing and they have been conferred with permanency in view of the agreement dated 13th May, 2011 which requires the petitioner to confer permanency on the employees, on the basis of aggregate service. It is pointed out that those employees have been in employment for more days than the respondent No.1 taking into consideration their aggregate service. It is further pointed out that one of the employees belongs to semi-skilled category and the respondent No.1 belongs to unskilled category. It is submitted that the applications filed by the respondent No.1 be dismissed.

7. I have considered the submissions made by the learned advocates for the respective parties. This Court while issuing notice on 2nd April, 2009 had granted *ad-interim* order to the effect that the respondents shall not take any coercive steps to implement the order passed by the Industrial Court and it was continued time to time until 11th October, 2013 on which date Rule came to be issued. The order dated 11th October, 2013 shows that this Court has neither continued the interim order nor has vacated it.

Be that as it may, the present controversy has to be decided on the basis of the facts brought by the respective parties on the record.

8. The contention of the petitioner / employer that the respondent No.1 had been in the employment with Husnoor Shikshan Sanstha, Nagpur during the period he was not in the employment with the petitioner has not been controverted by the respondent No.1. In view of this fact, I am not inclined to entertain Civil Application No. 1033 of 2015. The prayer of the respondent No.1 for directions to the petitioner to pay the amount of arrears of wages as directed by the Industrial Court is rejected. The Civil Application No. **1033 of 2015 is dismissed.**

9. As far as prayer of the respondent No.1 for directions to the petitioner to provide work is concerned, in my view, it has to be accepted. As per the joint pursis dated 1st August, 2014 the petitioner/employer had agreed to provide the work to the respondent No.1 for six months. The Civil Application No. 107 of 2012 and Civil Application No. 555 of 2013 were not pressed by the respondent No.1 in view of the fact that the petitioner was to provide work to the respondent No.1 for six months. The respondent No.1 had stated before this Court that he was not pressing the above referred civil applications and had sought liberty to reiterate his request after six months if situation arises. This Court while disposing of the above referred applications as not pressed, has granted liberty to the respondent No.1 and accordingly the present application is made by the respondent No.1. In view of these facts, the submissions made on behalf

of the petitioner that Civil Application No. 620 of 2015 cannot be considered by this Court in view of the disposal of Application No. 107 of 2012 earlier, cannot be accepted.

10. At this stage, Mr. Puranik, the learned advocate for the petitioner has submitted that liberty was granted to the respondent No.1 to agitate his grievance at subsequent stage only in respect of the grievance which was made in Civil Application No.1763 of 2011 and not in the other applications. Though the order of this Court dated 8th August, 2014 shows that the liberty was granted to the respondent No.1 to agitate his grievance at subsequent stage which was made in Civil Application No. 1763 of 2011, considering the facts of the case, specially that the order is passed on three applications on the same date, the benefit of doubt has to be given to the respondent No.1. In any case, there has not been any adjudication on merits as far as the issues which were raised in the Civil Application No.107 of 2012.

11. Considering the fact that there is adjudication by the Industrial Court in favour of the respondent No.1 and the fact that the respondent No.1 was provided work by the petitioner during the period of six months and the fact that the respondent No.1 has been paid his wages for six months and considering the pleadings of the respondent No.1 in paragraph 6 of Civil Application No. 620 of 2015, in my view, the petitioner should provide work to the respondent No.1 and make him available the wages regularly till decision of the petition. This order shall be operative from 1st July, 2015.

The Civil Application No.620 of 2015 is **allowed**
in the above terms.

JUDGE

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