

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1000 OF 2004
WITH
CIVIL APPLICATION NO.3993 OF 2015

1. The Works-Manager,
Central Workshop,
S.T.Chikalthana,
Aurangabad,
 2. The Dy.Gen.Manager (P & IR),
M.S.R.T.C. Mumbai
- PETITIONER

VERSUS

1. Mirza Athar Baig,
S/o Mirza Akhtar Baig,
House No.1/10/38, Juna-Bazar,
Aurangabad,
 2. S.D.Mane,
Divisional Secretary,
Maharashtra S.T.Workers
Union (INTUC), Central Workshop,
Chikalthana, Aurangabad
- RESPONDENTS

Mr.M.K.Goyanka, Advocate for the petitioners.
Mr.Nawab Patel with Mr.C.V.Thombre, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/08/2016

ORAL JUDGMENT :

1. The petitioner/Corporation is aggrieved by the judgment dated 06/10/2003 delivered by the Industrial Court, by which respondent

No.1 / employee was granted salary for a special medical leave and his complaint was therefore allowed.

2. Learned Advocates for the petitioners and the respondents have been heard at length.

3. There is no dispute that the respondent/employee was suffering from Tuberculosis and was on leave from 01/01/1994 till 03/07/1995 for about 549 days. By order dated 01/11/1995 bearing No.140/1995, leave for 549 days was sanctioned 'without pay' by the petitioners. Aggrieved by the said order, the respondent/employee preferred Complaint (ULP) No.326/1998 before the Industrial Court, which was allowed by the impugned judgment.

4. Contention of the petitioner is that there were two circulars introduced by the Corporation dated 31/03/1982 and 19/02/1988. The first circular laid down the procedure to be followed by an employee for taking medical treatment and for sanctioning of his leave. The circular further states that if the procedure is followed and the employee subjects himself to the medical treatment of a specialized hospital treating patients for tuberculosis and registered with the Corporation, the expenditure for the medical treatment

would also be borne held by the Corporation.

5. There is no dispute that the respondent/employee did not follow the prescribed procedure, did not get himself examined at the hands of the Civil Surgeon and he did not take medical treatment from such a hospital which was recognized by the Corporation. Consequentially, the expenditure incurred by him for such medical treatment was not reimbursed by the Corporation.

6. Mr.Thombre strenuously contends that once the special leave was sanctioned by the Corporation, no objection could be raised since the employee has taken the treatment from the Government Medical College and Hospital at Aurangabad. It is as good as any hospital recognized by the Corporation. He was, therefore, entitled for the leave for 549 days with pay.

7. The circular dated 31/03/1982 apparently is a special arrangement introduced by the Corporation with the benevolent object of ensuring that those employees suffering from tuberculosis are given appropriate medical assistance. It appears that since the entire medical expenditure incurred for such treatment availed from a hospital which is recognized by the Corporation, was to be

reimbursed, the said circular does not mention that the medical leave granted would be with wages.

8. A subsequent circular dated 19/02/1988 also prescribes the procedure to be followed for taking the treatment but does not mention that the medical leave would be with pay. Both the circulars require the patient to subject himself to the procedure and only then he would be entitled for reimbursement of the entire medical expenditure. I am, therefore, of the view that since the medical expenses were to be borne by the Corporation, there is no provision for granting leave with pay since it would amount to a double benefit.

9. However, I find that the Corporation has very casually conducted the proceedings before the Industrial Court. It did not cite instances of employees who have followed the circular, had availed of the medical treatment as per the circular and hence their medical expenditure was reimbursed and the leave was without pay. Had these details been brought before the Industrial Court, I find that the conclusion would have been different than the one arrived at in the impugned judgment.

10. Nevertheless, it cannot be ignored that despite the respondent

having violated the circulars, the petitioner sanctioned the leave for the entire period of 549 days without pay. There is no dispute that the respondent/employee was not given any reimbursement for the expenses incurred by him for the medical treatment.

11. In the peculiar facts of the case and without laying down any precedent considering that the petitioner/Corporation has not led proper evidence before the Industrial Court to disprove the claim of the employee, I am inclined to grant an amount of Rs.40,000/- (Rs.Forty thousand only) to the respondent, keeping in view that he has been in litigation for a long time and his medical bills have not been reimbursed since he had violated the circulars applicable.

12. An amount of Rs.48,947/- has been deposited in this Court on 11/06/2004 by the petitioner. The Industrial Court, by its order in Application (ULP) No.2/2003 had calculated the total amount payable as being Rs.72,000/-.

13. In the light of the above, this petition is partly allowed. The impugned judgment dated 06/10/2003 is modified by directing the petitioner to pay an amount of Rs.40,000/- to the respondent/employee, only because the leave was subsequently sanctioned

without pay on 01/11/1995.

14. This order shall not be treated as a precedent since it is passed keeping in view the peculiar facts of the case and the manner in which the petitioner conducted the case before the Industrial Court.

15. As such, the respondent/employee namely Mirza Athar Baig shall withdraw an amount of Rs.40,000/- from this Court by producing evidence with regard to his identity in the form of a self attested copy of the Pan Card or the election ID card and the residence proof. The remaining amount with accrued interest shall be returned to the petitioner, which it may withdraw from this Court.

16. Pending civil application, does not survive and is disposed of.

(RAVINDRA V. GHUGE, J.)