

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2186 OF 1996
(Old No. 4944 OF 1994)

1. The Chief Executive Officer,
Zilla Parishad, Dhule,

2. The District Health Officer,
Zilla Parishad, Dhule

-- PETITIONERS

VERSUS

1. Bhabuta Supadu Chaudhari,
R/o Padalade, Tal.Shahada,
Dist. Dhule,

2. The Block Development Officer,
Panchayat Samiti, Akkalkuwa,
Dist. Dhule.

-- RESPONDENTS

Mr.N.N.Desale h/f Mr.R.B.Raghuwanshi, Advocate for the petitioners.
Mr.J.C.Patil with Mr.C.M.Patil, Advocate for respondent No.1.
Respondent No.2 served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 28/09/2016

ORAL JUDGMENT :

1. The petitioner has challenged the award dated 24/06/1994 delivered by the Labour Court, Dhule by which the Application (IDA) No.3/1993 has been partly allowed and the petitioner is directed to pay an amount of Rs.1,81,518/- on or before 15/07/1994.

2. By an order dated 06/12/1994, this Court had admitted the petition and granted interim relief in terms of prayer clause 'C' on the condition that half of the amount shall be deposited in the Trial Court. The said amount, as per the statement of the respondents, is lying in the Labour Court.

3. Mr.Desale, learned Advocate for the petitioner/Zilla Parishad has advanced his strenuous submissions on 26/09/2016 after which the matter was posted today for 'passing orders'.

4. He has criticized the impugned award for the reason that the calculation of amount has not been properly made. Unpaid leave encashment has been granted without application of mind. The respondent was compulsorily from service and thereafter he has made his claim for leave encashment.

5. He further submits that the respondent being an 'Ayurvedic Vaidya' and working on the Primary Health Center of the Zilla Parishad, cannot be said to be a workman.

6. Notwithstanding the above, he, however, does not dispute the letter dated 22/06/2001 which has been issued by the Zilla Parishad,

by which the order of the Labour Court has been complied with considering the directions of the learned Division Bench dated 23/11/2000 in WP No.3907/1997 filed by the respondent.

7. Mr.Patil, learned Advocate appearing on behalf of respondent No.1 submits that he is 79 years old today. He has retired about 21 years ago. After this Court stayed the impugned award, the petitioner has deposited 50% of the amount.

8. He further submits that the learned Division Bench, vide its order dated 23/11/2000, has issued directions to the petitioners, which are set out in paragraph No.8 of the judgment. He, then, indicates from the order dated 22/06/2001 to support his contention that the Zilla Parishad has already brought into effect the directions of this Court dated 23/11/2000 and hence nothing survives in this matter. He further submits that it would cause manifest inconvenience and grave hardships if the entire issue is reopened considering the fact that the respondent/employee is now 79 years old.

9. I have considered the submissions of the learned Advocates and have gone through the petition paper book coupled with the

order of this court dated 23/11/2000 and the order of the Zilla Parishad dated 22/06/2001.

10. In the judgment dated 23/11/2000, this Court has observed that the respondent/employee must get the benefit of the period under leave from 09/10/1980 to 07/03/1981 and 31/10/1984 to 25/05/1988. The observations of this Court in paragraph No.6, 7 and 8 read as under :-

“6. The Enquiry Officer in his findings. Which have not been challenged by the petitioner at any time. Observed that the period from 09/10/1980 to 07/03/1981 (about five months), the petitioner had covered by his leave application which were submitted and handed over to the Junior Assistant. However, for the period from 08/03/1981 to 30/10/1984. There was no leave application till he approached the Zilla Parishad on 30/10/1984 with an application to resume the duties. It is also revealed from the reply filed on behalf of the Zilla Parishad that on 25/05/1988 an order came to be passed calling upon the petitioner to report for duty and he reported only on 07/06/1988, he remained absent till the order of compulsory retirement was passed. It is clear that for the period from 08/03/1981 to 30/10/1984. The petitioner did not submit any application nor any intimation to the Zilla parishad regarding his absence for this period of 3 & ½ years and even from 09/08/1988, he remained absent till the punishment order was issued. The only period that is covered under leave is from

09/10/1980 to 07/03/1981 and the period from 31/10/1984 to 24/05/1988. During which period no orders were passed by the Zilla Parishad allowing the petitioner to resume the duties. In the return filed by the Zilla Parishad, this has not been explained and therefore, the petitioner must get the benefit of this period when he was made to wait to report for duty as it was a compulsory waiting period.

7. Mr. Joshi, learned counsel for the petitioner, relied upon the award passed by the Labour Court. This award has been challenged by the Zilla Parishad in WP No.4944/1994 and the petition is pending before the learned Single Judge for final hearing. Suffice to say at this juncture that the reliance of the learned counsel for the petitioner on the award passed by the Labour Court is totally misplaced and we have already set out our reasons in this regard in the foregoing paragraphs of this judgment. Except for the period when the petitioner had submitted the leave applications and during the period when he was compulsorily kept on waiting, the petitioner does not deserve to be given the benefit of the period of absence from 09/10/1980 to 31/07/1989.

8. In the result, we direct the Chief Executive Officer, Zilla Parishad, to count the period from 09/10/1980 to 07/03/1981 as leave period and adjust the same against the sick leave available or as authorised leave, as the case may be including any kind of leave as may be admissible to him. We also direct that the period from 31/10/1984 to 25/05/1988 shall not be treated as a period of absence unauthorized leave and the benefit of that period as well shall be given to the petitioner for

computation of compulsory retirement pension. So far as the payment for this period is concerned, we direct the Zilla Parishad to treat the period as suspension and pay him the subsistence allowance from 31/10/1984 till 31/07/1989, as per the rules applicable to the petitioner at the relevant time. The amount of payment or any other dues that are due to the petitioner pursuant to this order shall be adjusted against the amount already paid to the petitioner pursuant to the order passed by the Labour Court and in case, there is any balance remaining in favour of the petitioner, same shall be disbursed as early as possible and preferably within a period of six months from today."

11. The respondent/employee had claimed Rs.1,81,518/- towards unpaid leave salary, Rs.23,520/- towards gratuity, Rs.46,556/- towards difference of pension, Rs.1,39,264/- as interest @ 18% p.a. and therefore a total amount of 4,27,843/-, in his application (IDA) No.3/1993 u/s 33 C (2) of the I.D.Act. By the impugned judgment, except the claim towards unpaid leave salary which is in fact leave encashment for an amount of Rs.1,81,518/-, the Labour Court has rejected all other claims of the employee. He has not challenged the said judgment in this Court.

12. Learned Advocate for the petitioner informs, on instructions

from the officer present in the Court, that pursuant to the order of this Court dated 06/12/1994, entire amount of Rs.1,81,518/- has been deposited before the Labour Court and the same may have been withdrawn by the employee. Mr. Patil submits that he is not aware as to whether the said employee has withdrawn the entire amount. Under the said order, dated 06/12/1994, the amount has been invested in a Nationalized Bank. Office record indicates that the employee has not filed any Civil Application for withdrawal of the amount from the Labour Court.

13. The learned Division Bench, in paragraph No.7 of the judgment dated 23/11/2000 has observed as, *“Except for the period when the petitioner had submitted the leave applications and during the period when he was compulsorily kept on waiting, the petitioner does not deserve to be given the benefit of the period of absence from 09/10/1980 to 31/07/1989.”* This is exactly the period for which the Labour Court has allowed the claim of the employee and granted Rs.1,81,518/- by the impugned judgment dated 26/06/1994.

14. In paragraph No.8 of the judgment dated 23/11/2000, the learned Division Bench has observed as, *“We also direct that the*

period from 31/10/1984 to 25/05/1988 shall not be treated as a period of absence unauthorisedly and benefit of that period as well shall be given to the petitioner for compensation of compulsory retirement pension. So far as the payment of this period is concerned, we direct the Zilla Parishad to treat the period as suspension and pay him the subsistence allowance from 31/10/1984 till 31/07/1989 as per the Rules applicable to the petitioner at the relevant time. The amount of payment or any other dues that are due to the petitioner, pursuant to this order shall be adjusted against the amount already paid to the petitioner pursuant to the order passed by the Labour Court and in case, there is any balance remaining in payable of the petitioner, same shall be disbursed as early as possible and preferably within a period of six months from today.”

15. It is not disputed that the amount as granted by the Labour Court is for the period 09/10/1980 to 31/07/1989, which is deposited in the Labour Court. The learned Division Bench has granted an amount as subsistence allowance from October 1984 to July 1989, which is half of the period.

16. As such, this petition is disposed of with the direction that if

the respondent / employee has not withdrawn the amount deposited in the Labour Court, considering the directions of the learned Division Bench, he shall be entitled for the 50% of the amount as well as 50% of the interest accrued, which he may withdraw from the Labour Court, Dhule by making a proper application duly identified by an Advocate and by placing on record tangible identity proof in the form of his election identity / voter's card. The remaining 50% amount with 50% interest shall be withdrawn by the petitioner / Zilla Parishad, through an Authorized Officer under a proper authorization and by tendering a copy of the authority letter before the Labour Court. In the event, the respondent / employee has already withdrawn the entire amount from the Labour Court, there shall be no recovery from the respondent / employee despite the observations set out herein.

17. Rule is discharged.

(RAVINDRA V. GHUGE, J.)