

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2694 OF 1997

The State of Maharashtra
Through -

1. Sub-Divisional Engineer,
Minor Irrigation (EGS) No.2,
Sub-Division Bhokar,
District Nanded.

2. Executive Engineer,
Nanded No.1 Division,
Nanded.

3. Superintending Engineer,
Minor Irrigation Circle Office,
Aurangabad.

..Petitioners

Versus

1. Shaikh Mukhtar s/o Mohiyoddin,
Age 24 years, Occupation Nil,
r/o Behind Nyaya Mandir, Bhokar,
District Nanded.

2. Presiding Officer and Judge,
Labour Court, Nanded.

..Respondents

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AGP for Petitioners : Shri Sonpawale S.P.
Advocate for Respondent 1 : Shri Chincholkar G.N.
Respondent 2 : Deleted.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 06, 2016
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ORAL JUDGMENT :-

1. Respondent No.2 is the Labour Court and hence deleted from
this proceeding.

2. The petition is aggrieved by the judgment of the Labour Court dated 19.2.1992. Complaint (ULP) No 290 of 1990 has been allowed and the respondent is granted reinstatement with continuity and full backwages.

3. This petition was admitted on 24.7.1997 and interim relief in terms of prayer clause (B) was granted, thereby, staying the impugned judgment.

4. Normally, a Writ Petition against the judgment of the Labour Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ") cannot be entertained as a statutory remedy of preferring a Revision Petition under Section 44 is available. This Court has held that a Writ Petition without availing the remedy of filing a Revision is untenable in law (Engineering Employees Union Vs. Devidayal Rolling & Refinery Pvt. Ltd. [1986 (52) FLR 40 = 1986 Mh.L.J. 331]). However, since this matter has been admitted almost 20 years ago, I am deciding this matter on its merits.

5. I have heard the submissions of the learned Advocates for the respective sides and have gone through the petition paper book with their assistance

6. There is no dispute that though the petitioner had appeared before the Labour Court in ULP complaint, neither a written statement was filed, nor did the petitioner lead evidence. The Labour Court in these circumstances relied upon the affidavit Exhibit U-14 and allowed the complaint on the ground that the complaint is unchallenged. It is settled law that a complaint or a suit cannot be allowed by relying on an affidavit only on the ground that the respondent / defendant has not participated in the proceeding. The impugned judgment in this case, therefore, deserves to be set aside.

7. However, it cannot be ignored that by remanding the complaint to the Labour Court, the respondent / employee would have to suffer rigours of litigation as the clock will have to be reversed by 27 years, considering the fact that the complaint was filed on 17.11.1989. In my view, by awarding costs to the respondent, his rigours of litigation would be reduced. Learned AGP has strenuously submitted that since the petitioners are the State instrumentalities, minimum costs be imposed. Learned Advocate for the respondent has prayed for the dismissal of the Writ Petition.

8. For the above reasons and considering the fact that the impugned judgment was stayed from 24.7.1997, this petition is partly allowed. The impugned judgment dated 19.2.1992 is quashed and set aside and Complaint (ULP) No.290 of 1990 is remitted to the

Labour Court, Aurangabad on the following conditions:-

- (A) The litigating sides shall appear before the Labour Court on 6.1.2016.
- (B) The petitioners shall deposit an amount of Rs.25,000/- before the Labour Court on the date of appearance.
- (C) The respondent / employee shall be at liberty to withdraw the said amount without conditions, by making an application supported by his recent photograph and identity proof in the nature of the Election Commission's Voter Id card.
- (D) The petitioners shall file their written statement, along with documents, if any, on/or before 13.1.2017 before the Labour Court.
- (E) The Labour Court shall then frame issues and decide the Complaint afresh by considering the rival contentions of the parties.
- (F) The Labour Court shall decide the complaint as expeditiously as possible and preferably on/or before the 31st day of August 2017.
- (G) Considering that the complaint is of the year 1989, the litigating sides shall refrain from seeking adjournments on unreasonable and trivial grounds.
- (H) It needs mention that if the petitioners fail to deposit

the costs as directed, then the earlier judgment dated 19.2.1992 shall come into force and the Labour Court shall accordingly close the said proceedings.

9. Rule is made partly absolute in the above costs.

(RAVINDRA V. GHUGE, J.)

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