

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 8776 OF 2015

Chief Officer,
Nagar Parishad Beed,
Tal. & Dist. Beed.

... **PETITIONER**
(Orig. non-applicant)

VERSUS

Inamdar Gausmohiyoddin Jahuroddin,
Age major years, Occu. Service,
R/o. Shahensha (Laximan) Nagar, Beed,
Tal. & Dist. Beed.

... **RESPONDENT**
(Orig. applicant)

...

Mr. S. S. Thombre, Advocate for Petitioner.

Mr. M. K. Deshpande, Advocate for Respondent.

...

CORAM : **P. R. BORA, J.**

DATE : 28th June, 2016.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, the matter is taken up for final disposal.

2 The present writ petition is filed against the order passed

by the Labour Court, Aurangabad on 25th November, 2014 in Application (IDA) No.13 of 2012. The aforesaid application was filed by the present Respondent under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court has allowed the said application and has directed the present Petitioner to pay Rs.3,48,333/- to the Applicant with interest @ 12% per annum from 8th August, 2012 till the realization of the entire said amount.

3 This Court vide order passed on 4th January, 2016 has restrained the present Respondent from seeking execution of the impugned order on condition that the Petitioner deposits an amount of Rs.2,25,000/- in this Court.

4 Shri Thombre, learned counsel submitted that the impugned order is an *ex-parte* order. The learned counsel submitted that though a counsel was appointed to represent the Petitioner, he did not appear in the said matter nor any say could be filed on behalf of the Petitioner. The learned counsel submitted that in such circumstances, without there being any say from the Petitioner and merely relying on the averments made in the application so filed by the present Respondent, the judgment has been passed. The

learned counsel submitted that in fact, the Respondent is not entitled to receive any amount as has been claimed by him in the application filed before the Labour Court. The learned counsel submitted that the Municipal Council needs to be given an opportunity to file say in the said matter and to cross-examine the Respondent and also to adduce necessary evidence.

5 The learned counsel appearing for the Respondent has strongly opposed for granting the request so made by the Petitioner. The learned counsel submitted that adequate opportunities were given to the Petitioner for appearance in the matter before the Labour Court as well as for filing the say in the said matter. The learned counsel submitted that it was the negligence on the part of the Municipal Council which has resulted in passing the *ex-parte* order. The learned counsel submitted that the Labour Court while deciding the application has not only relied upon the averments made in the application, but also examined its legality and a reasoned order has been passed, which requires no interference.

6 After having considered the arguments advanced by the learned counsel for the respective parties, it appears to me that

ultimately the matter requires to be decided on merits. There may be some negligence on the part of the Petitioner, for which it can be penalized by asking to pay adequate cost to the Respondent but it cannot be denied an opportunity to contest the matter on merits. I am therefore, inclined to remit back the matter to the Labour Court with a direction to decide it afresh by permitting the Petitioner to file its say and to adduce evidence in its behalf.

7 The learned counsel appearing for the Respondent during the course of arguments has prayed for permitting the Respondent to withdraw the amount of Rs.2,25,000/- deposited by the Petitioner in pursuance to the order passed by this Court. The learned counsel submitted that the Respondent may be permitted to withdraw the said amount and with such permission, the matter may be remanded to the Labour Court for its decision afresh. The request so made on behalf of the Respondent cannot be wholly accepted in view of the fact that very entitlement of the Respondent is disputed by the Municipal Council. It appears to me that it would meet the ends of justice if the Respondent is permitted to withdraw an amount of Rs.1,00,000/- (Rupees One Lac only) on an undertaking that in the event any adverse order is passed against him in the proceedings before the

Labour Court and refund is directed of the said amount by the Labour Court, he shall refund the said amount within three months from the date of said order. In the result, the following order.

ORDER

- I. The order dated 25th November, 2014 passed by the Labour Court, Aurangabad in Application (IDA) No.13 of 2012 is set aside.
- II. The matter is remanded back to the Labour Court for deciding it afresh by permitting the Petitioner Municipal Council to file its say on record and with further permission to cross-examine the Applicant employee and to adduce evidence in its behalf, if so desired.
- III. The Petitioner shall pay costs of Rs.2,000/- (Rupees Two Thousand only) to the Respondent of this petition.
- IV. The Respondent is allowed to withdraw a sum of Rs.1,00,000/- (Rupees One Lac Only) from out

of the amount of Rs.2,25,000/- deposited by the Petitioner in this Court on an undertaking that in the event any adverse order is passed against him by the Labour Court in Application (IDA) No.13 of 2012, he will re-deposit the said amount within two months of passing of such order.

V. The balance amount is permitted to be withdrawn by the Petitioner alongwith interest, if any, accrued thereon.

VI. Rule is made absolute in above terms.

VII. Pending civil application stands disposed of.

[P. R. BORA, J.]