

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4057 OF 2011

THE STATE OF MAHARASHTRA AND ORS
VERSUS
SECRETARY, MARATHWADA LAL BAWTA KAMGAR UNION

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AGP for Petitioners : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 02, 2016

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PER COURT :-

1. None appears for the respondent.
2. This Court had passed an order on 22.12.2011 as under:-

“ Heard learned AGP for the petitioner State. He seeks time to seek instructions from the Secretary, Dairy Development Department as to whether the Regional Dairy Development Officer, Aurangabad and General Manager of the Milk Scheme, Udgir had signed on the draft compromise and it had been agreed to pay Rs.18,71,373/- to 76 workers, whose earned leave had been lapsed. The AGP submits that this agreement was not approved by the Government at Secretariat level.

At the request of the learned AGP, S.O. to 6th January, 2012.

Till then, execution of warrant dated 12.12.2011 is stayed.”

3. On 10.2.2012, after hearing the learned Advocate for the respondent, this Court had directed the respondent to clarify, whether leave is credited to the account of the respondent's employees.

4. By order dated 9.4.2014, passed in Civil Application No.236 of 2014, this Court had permitted 14 persons or their legal heirs to withdraw the legal dues under certain conditions. It would be apposite to reproduce the said order herein below:-

“1. Heard Shri Yenge, learned Advocate for the applicants.

2. It is submitted that page No.5 of the Civil Application is an order of this Court passed on 9.12.2013, concerning the same litigating parties, in Writ Petition No.4057 of 2011.

3. I have gone through the order passed by this Court. The statement on behalf of the petitioner-State was recorded that leave encashment benefits are payable only if the employee retires / attains the age of superannuation. In the light of that statement, this Court allowed 31 employees to withdraw the amount under the head "Leave Encashment Benefits" which is evident from the said order.

4. *Shri Yenge, learned Advocate has drawn my attention to page No. 7 of this Civil Application, which contains a list of 14 persons, who have retired from the employment and are, therefore, eligible for leave encashment benefits. The applicant is the Union.*

5. *In my view, since the Writ Petition is pending adjudication, these employees, who are seeking withdrawal of leave encashment benefits as per the amounts mentioned on page No.7, need to be put under some conditions, so as to ensure that in the event the petition succeeds, the money being withdrawn by them is returned to the State. Shri Yenge, learned Advocate has expressed no hesitation to submit the individual undertakings of these 14 persons, or their legal heirs as the case may be, in this Court, as a precondition for withdrawing the said amount.*

6. *It is therefore, directed that these 14 persons, or their legal heirs, as the case may be, shall execute an undertaking setting forth their complete names, complete address, telephone numbers (cell and/or land-line) and attested photostat copy of their election identity card. The undertaking shall mention that in the event of change of address or telephone numbers, the concerned persons shall intimate in writing the change. The undertaking shall also include a statement that in the event, the Writ Petition succeeds, the amounts withdrawn by these 14 employees or their legal heirs, as the case may be, shall be re-deposited in this Court within a period of 30 days from the date of the judgment in this petition.*

7. *In these circumstances, these 14 persons, or their legal heirs, as the case may be, are individually allowed to withdraw the amounts mentioned on page No.7, by filing such an undertaking along with the documents as directed above as a precondition while withdrawing the said amount.*

8. *With these directions, the Civil Application is partly allowed and disposed of.”*

5. By the orders dated 24.7.2015 and 30.10.2015, in Civil Application Nos.8274 of 2015, 14419 of 2015, 3984 of 2014 and 11357 of 2014, respectively, the eligible workmen were permitted to receive their payments through the applicant Union under conditions set out in these two orders.

6. The learned AGP has taken me through the impugned order, which is apparently an unreasoned order. The petitioner had not participated in Complaint (ULP) No.265 of 2004, which was decided by the impugned judgment dated 29.7.2004. As a consequence, the Industrial Court relied purely on the affidavit of the Union representative at Exhibit U/5 and has allowed the complaint by passing the following order:-

“1. Complaint is allowed.

2. It is hereby declared that the respondent no.1 to 3

indulged in unfair labour practices under Items, 5,6 & 9 of Scheduled IV of M.R.T.U. & P.U.L.P. Act and they should cease and desist it by giving benefit of the earned leave to the employees those who have not enjoyed by making the payment to them as per rules.

3. No order as to costs.”

7. Learned AGP submits that the benefits of leave encashment and earned leave are available only to employees who have retired from service. The petitioner has no hesitation in ensuring that such benefits are available strictly as per Rules.

8. I find from the order passed by the Industrial Court that the petitioner has been directed to give the benefits of the earned leave to those employees, who have not enjoyed such leave and payment should be made to them as per Rules. Learned AGP submits that this petition can be disposed off as the petitioner is prepared to make the said payment strictly as per the Rules applicable.

9. In the light of the above, this petition is disposed off by recording the statement. Needless to state, the eligible persons, who are covered by Complaint (ULP) No.265 of 2004 and the impugned judgment dated 29.7.2004, shall be entitled for such benefits which are permissible in accordance with the Rules applicable, if not

already so paid.

10. The residual amount pending in this Court can be withdrawn by the petitioner considering the statement made as above.

(RAVINDRA V. GHUGE, J.)

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