

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4035 OF 2013

The Secretary,
Krishi Vigyan Kendra,
Kharpudi Village, Bhatepuri Road,
Jalna, Dist.Jalna

PETITIONER

VERSUS

Ghansham S/o Ramchandra Varma,
Age-45 years, Occu-Nil,
R/o Akeli Masjid, Dhangarpura,
Jalna

RESPONDENT

Mr.N.K.Choudhari, Advocate for the petitioner.
Mr.K.J.Suryawanshi, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 24/02/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Mr.Choudhari, learned Advocate appearing on behalf of the petitioner has strenuously criticized the judgment of the Labour Court dated 08/12/2009 by which Complaint (ULP) No.41/2005 was

partly allowed. He is aggrieved even by the judgment and order of the Industrial Court dated 27/07/2012 by which Revision (ULP) No.25/2010 has been dismissed.

3. The strenuous submissions of Mr.Choudhari can be summarized as follows :-

- [a] The Marathwada Sheti Sahayya Mandal (MSSM) is a public trust registered under the provisions of The Bombay Public Trusts Act and the Societies Registration Act.
- [b] MSSM was established in 1969 for ensuring water resources management, land development, dry land farming, forestation, development and research in agricultural land.
- [c] The Indian Council of Agricultural Research (ICAR) is a National Agency established by the Department of Agriculture, Union of India.
- [d] The ICAR sponsored the Krishi Vigyan Kendra.
- [e] The petitioner is one such Krishi Vigyan Kendra.
- [f] The petitioner gets funds from ICAR mainly for pay and allowances of the staff.
- [g] The respondent/employee claims to have joined the MSSM on one 01/08/1971
- [h] On 30/06/1994, the respondent claimed to have resigned.
- [i] The resignation was submitted in his own handwriting to the MSSM and not to the petitioner which was already in existence.
- [j] The petitioner has never received the resignation letter, much less accepted it.

- [k] The petitioner has never relieved the respondent pursuant to his resignation on 01/11/1994.
- [l] The respondent claimed to have withdrawn his resignation.
- [m] The respondent filed complaint (ULP) No.41/2005 for challenging his alleged termination dated 01/11/1994 and delay caused was condoned by the Labour Court.
- [n] The petitioner filed its written statement contending that social security legislation like the EPF and MP Act, 1952 and the payment of Gratuity Act, 1972 were not applicable to the petitioner.
- [o] The respondent was unauthorizedly absent from 30/06/1994.
- [p] The respondent, during the pendency of the complaint, has orally waived his back wages on the ground that he should be paid his retiral benefits like provident fund, gratuity etc.
- [q] The petitioner/Management has accepted his oral request made in the Labour Court regarding waiver of back wages, but has not accepted his oral request for retiral benefits.
- [r] The Labour Court has delivered the impugned judgment beyond the scope of its powers u/s 30 of The MRTU and PULP Act, 1971.
- [s] The Industrial Court has committed the same error as was committed by the Labour Court in dismissing the revision petition of the petitioner.
- [t] The petitioner falls u/s 1(3)(c) of the Payment of Gratuity Act, 1972 and hence, until the Central Government issues a notification, this Act would not be applicable to the petitioner.
- [u] Since the respondent had waived back wages and had attained the age of superannuation in 2007, the Labour Court was left with no scope to grant any relief to the respondent.

[v] Both the impugned judgments deserve to be quashed and set aside and the complaint filed by the respondent deserves to be rejected.

4. The petitioner has relied upon the following 3 judgments :-

[a] *State of Punjab Vs. The Labour Court, Jullundur and others*, AIR 1979 SC 1981,

[b] *Chief Engineer, Hydel Project and others Vs. Ravinder Nath and others*, AIR 2008 SC 1315,

[c] *State of Maharashtra and others Vs. Presiding Officer, Industrial Court, Civil Lines, Nagpur and others*, 2006(5) Mh.L.J. 838.

5. Mr.Suryawanshi, learned Advocate on behalf of the respondent/employee has supported the impugned judgments. Contention is that a conditional oral request was made before the Labour Court by the respondent that he would waive his back wages and would accept his retiral benefits only with the intention of bringing the litigation to an end and in the light of the fact that he had attained the age of superannuation in 2007.

6. He expresses his astonishment to the contentions of the petitioner that they have accepted the oral request of the respondent, in part, of waiver of back wages and have rejected the request for

retiral benefits. No such submission was made across the bar before the Labour Court.

7. He further submits that either the petitioner should have accepted the entire request of the respondent or should have rejected the oral request in its entirety. He submits that if the petitioner continues to contend that the respondent was never relieved from employment, this Court may consider the aspect of grant of back wages.

8. He further submits that there is no dispute as regards the tenure of employment of the respondent and in the event the petitioner contends of unauthorized absenteeism, the same cannot be presumed to have been proved without conducting a disciplinary proceedings. He, therefore, prays for the dismissal of this petition with costs.

9. I have considered the submissions of the learned Advocates, as recorded above.

10. There can be no debate that the EPF Act, the Payment of Gratuity Act, the ESIC Act, the Employees Compensation Act etc., are

a part of social legislation. There also cannot be a debate that there are specific authorities created under this Act for dealing with the disputes pertaining to the claims falling under the said Act.

11. Considering the above position in Law, I am in respectful agreement with the ratio laid down by the learned Supreme Court as well as the learned Single Judge of this Court in the matters of State of Punjab (supra), Chief Engineer, Hydel Project and others (supra) and the State of Maharashtra (supra) cited by Mr.Choudhari.

12. It appears that the petitioner is labouring under the misconception that it would fall u/s 1(3)(c) of the Payment of Gratuity Act, 1972. It would be apposite to reproduce Section 1 of the said Act, as under :-

“1. Short title, extent, application and commencement

(1) This Act may be called The Payment of Gratuity Act, 1972.

(2) It extends to the whole of India :

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir

(3) It shall apply to -

(a) every factory, mine, oilfield, plantation, port and railway company ;

(b) every shop or establishments within the meaning of any law for the time being in force in relation to

shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months ;

(c) such other establishment or class of establishment, in which ten or more employees are employed or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

[(3A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.]

(4) It shall come into force on such date as the Central Government may, by notification, appoint.”

13. The petitioner is an Establishment under the Bombay Public Trusts Act and the Societies Registration Act, 1960. It is an Establishment brought into existence within the State of Maharashtra. It is not an Establishment which is a creation of the Central Government. In my view, therefore, Section 1(3)(c) would not be applicable to the petitioner, merely because it is executing a project which is funded by the ICAR.

14. In my view, it is an establishment within the meaning of any

Law in the State of Maharashtra and therefore would be covered u/s 1(3)(b) of the Act.

15. Notwithstanding the above, the basic grievance of the petitioner appears to be that the relief granted by the Labour Court in paragraph No.18(5) of the impugned judgment is unsustainable in Law. Translated paragraph No.18(5) reads as under :-

“Respondent is directed to grant all service and retiral benefits as like continuity of service from 01/11/1994 with provident fund, gratuity and similar benefits.”

16. Firstly, it has to be put to rest that there is no dispute raised by the petitioner as regards the applicability of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. In the backdrop of this undisputed position, the contention of the petitioner that it is the limb of the Central Government, cannot be entertained.

17. The complaint filed by the respondent was u/s 28 of the 1971 Act. The powers of the Labour and Industrial Courts in dealing with such complaints are provided u/s 30 which read as under :-

“30. POWERS OF INDUSTRIAL AND LABOUR COURTS. –

(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order –

(a) declare that an unfair practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all of any or its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of –

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.”

18. The power of the court to decide all connected matters are set out in Section 32 which reads as under :-

“32. POWER OF COURT TO DECIDE ALL CONNECTED MATTERS. –

Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act.”

19. The contention of Mr.Choudhari is that the Labour Court could not have the power to direct payment of Provident Fund and Gratuity u/s 30(1)(b) for the reason that these aspects fall under Specific Acts which provide for specific mechanism for dealing with claims thereunder and also for the reason that the Labour Court cannot grant any relief beyond Section 30(1)(b).

20. In so far as the first submission of Mr.Choudhari noted as above is concerned, he is right in submitting that any dispute pertaining to the provident fund or gratuity will have to be decided under the relevant acts. His second submission is fallacious since the Labour or Industrial Courts, through their orders, can “take such affirmative action”..... “as may in the opinion of the Court be necessary to effectuate the policy of the Act.” I find from the submissions of Mr.Choudhari that he is culling out the bracketed portion u/s 30(1)(b) as being the fetters or limits imposed upon the powers of the Court to grant any relief. He has over looked the power of the Court to pass orders for taking affirmative action to effectuate the policy of the Act and that includes the bracketed portion u/s 30(1)(b) which is inclusive and not exhaustive.

21. In the light of the above, the powers of the Labour and

Industrial Courts, while passing orders u/s 30(1)(b) cannot be fettered to the extent of the bracketed portion under sub clause (b) as they are empowered to initiate such affirmative action, which in their opinion would be necessary to effectuate the policy of the Act.

22. Be that as it may, the contention of the petitioner set out in its skeletal written statement running into one and a quarter page is that the respondent was not relieved from employment, but was unauthorizedly absent. The learned Apex Court in the case of Novartis India Ltd., Vs. State of West Bengal and others, (2009)3 SCC 124 has concluded that the contention of unauthorized absenteeism is a charge of having committed a mis-conduct by the employee. It has thus been settled that such a charge cannot be proved unless disciplinary proceedings are initiated. The learned Apex Court has therefore granted full back wages to the concerned employee since the Management had not conducted any disciplinary proceeding to prove the charge of unauthorized absenteeism when the concerned employee declined to report at the place of transfer.

23. In the light of the above, considering the fact that the petitioner has selectively accepted the conditional oral request of the respondent only to the extent of waiver of back wages, which was

only beneficial for itself, has exhibited an element of unfairness by rejecting the connected part of his request that he should be paid his retiral benefits. The waiver of back wages was apparently on the condition that he would be paid his retiral benefits. The petitioner, therefore, is not entitled to take any advantage of the offer of the respondent.

24. In the light of the above, this petition is partly allowed and the judgment of the Labour Court is partly modified. Since the petitioner has taken a stand of unauthorized absenteeism and has not conducted an enquiry, in as much as, failed to prove unauthorized absenteeism before the Labour Court, the impugned termination of service from 01/11/1994 deserves to be set aside.

25. At the same time, it cannot be ignored that the respondent has superannuated in 2007 and hence there is no issue of reinstatement. The respondent shall therefore be entitled for 50% back wages considering the view taken by the learned Apex Court in the case of Nicholas Piramal India Ltd., Vs. Hari Singh 2015 (2) CLR 468 to be paid by the petitioner within a period of 8 (eight) weeks from today, failing which, the said amount would carry simple interest @ 3% p.a. from the date of the judgment of the Labour Court 08/12/2009.

26. So far as gratuity and provident fund is concerned, the respondent is at liberty to initiate appropriate proceedings for making a claim for the same by approaching the competent authorities within a period of 8 (eight) weeks from today. The time spent by the respondent in litigation, shall be considered by the competent authority, as a good ground for condonation of delay. The direction to pay provident fund and gratuity issued by the Labour Court is, therefore, set aside.

27. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)