

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4498 of 2013

Arjun Dattatraya Baravkar,
Age 37 years, Occu. Labour,
R/o. C-4, Gurukul Housing Society,
Pipeline Road, Ahmednagar.

...PETITIONER

VERSUS

1. S.M.Computers Pvt.Ltd.,
12, Nirmal Chambers,
Lal Taki, Ahmednagar,
Through its Managing Director.
2. Inspector General of Registrar
Stamp Controller, Maharashtra State,
Central Building, Pune.

...RESPONDENTS

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Mr.P.V.Barde, Advocate, for petitioner.

Mr.P.G.Borade, AGP for respondent State.

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Date of reserving the order: 8.6.2016

Date of pronouncing the order:5.7.2016

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CORAM: P.R.BORA, J.

DATE: July 5th, 2016

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PER COURT:

1. Present Writ petition is filed against the judgment and order dated 2nd of March, 2013, passed by the Member, Industrial Court, Ahmednagar, in Complaint (ULP) No.44/2007. The aforesaid complaint was filed by the petitioner seeking permanency benefits. Vide the impugned judgment the Industrial Court has dismissed the complaint so filed by the petitioner.

2. It is the contention of the petitioner that he joined the services with respondent no.1 with effect from 9.2.2002. It was his further contention that respondent no.1 had entered into a contract with respondent no.2 for installation, maintenance and preparation of the record of the computers. It was his further contention that the work which was allotted to the petitioner was of a permanent nature. It was his further contention that though he did work with respondent no.1 continuously for more than five years and had worked for more than 240 days in every year, the benefits of permanency were not awarded to him. It was his further contention that since

the respondents did not consider his request, he was constrained to file a complaint before the Industrial Court, Ahmednagar, seeking the relief of permanency and allied benefits.

3. The record of the case shows that the aforesaid complaint was dismissed by the Industrial Court vide its judgment and order passed on 15.12.2010. The petitioner challenged the said order by filing Writ Petition No.3772/2011. This Court while disposing of the aforesaid writ petition remanded back the matter to the Industrial Court by setting aside its order dated 15.12.2010 directing it to decide the same in accordance with the provisions of law. The record further shows that after the matter was remanded, the Industrial Court re-decided the same and vide order passed on 2nd of March, 2013, dismissed the complaint filed by the present petitioner.

4. Shri Barde, learned Counsel appearing for the petitioner, submitted that the learned Industrial Court has passed the impugned judgment and order without adhering to the observations made by this Court while disposing of Writ Petition No.3772/2011. Learned

Counsel submitted that the Industrial Court has virtually reproduced the earlier order by adding only one additional paragraph and stating the same reasons has again dismissed the complaint filed by the petitioner. Learned Counsel, therefore, prayed for again remitting the matter back to the Industrial Court so as to decide all the grievances raised by the petitioner.

5. Respondent no.1 though is duly served, has not entered his appearance in the matter. Learned A.G.P. appearing for respondent no.2, has supported the impugned judgment and order. It was the contention of the learned A.G.P. that respondent no.2 is unnecessarily impleaded as party respondent since there is no privity of contract between the respondent no.2 and the petitioner. Learned A.G.P., therefore, prayed for dismissal of the petition.

6. After having considered the submissions advanced by the learned Counsel appearing for respective parties and upon perusal of the impugned judgment, it is apparently revealed that the Industrial Court has failed in

appreciating the observations made by this Court while disposing of Writ Petition No.3772/2011 and has consequently failed to address the issues which ought to have been looked into by it. The Industrial Court has dismissed the complaint observing that the petitioner is not in the employment of the respondents since 18.4.2007 and, in the circumstances, no order can be passed in the complaint filed by the petitioner on 25.6.2007, directing respondent no.1 to make the petitioner permanent in their services. Merely on this ground the complaint could not have been dismissed by the Industrial Court. The issue before the Court was whether the petitioner was entitled for claiming permanency benefits. His entitlement was liable to be decided on the basis of his past service record. This was precisely directed by this Court while deciding Writ Petition No.3772/2011. In the circumstances, I am constrained to again remit back the matter to the Industrial Court for deciding it afresh by properly addressing the issues raised in the complaint. Hence, the following order:

ORDER

1) The Writ Petition is partly allowed. The order passed by the Industrial Court, Ahmednagar, on 2nd of March, 2013, in Complaint (ULP) No.44/2007 is quashed and set aside. The matter is remanded back to the Industrial Court, Ahmednagar, to decide it afresh in the light of the order dated 13th of June, 2012, passed by this Court in Writ Petition No.3772/2011.

(P.R.BORA)
JUDGE

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AGP/4498-13wp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Date of decision:

For approval and signature

HON'BLE MR.JUSTICE P.R.BORA

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| 1. Whether the Reporters of Local Papers may be allowed to see the Judgment ? | Yes |
| 2. To be referred to the Reporter or not ? | Yes/No |
| 3. Whether Their Lordships wish to see the fair copy of the Judgment ? | No. |
| 4. Whether this case involves a substantial? question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ? | No. |
| 5. Whether it is to be circulated to the Civil Judges ? | No. |
| 6. Whether the case involves an important question of law and whether a copy of the Order should be sent to Bombay, Goa and Nagpur Office ? | No |

Private Secretary
AGP/