

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5301 OF 2016

MAHILA ARTHIK VIKAS MAHAMANDAL
VERSUS
SAYARA BANU JABBAR SHAIKH AND ANOTHER

...
Advocate for Petitioners : Shri Chavan Sudhir K.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: July 28, 2016
...

PER COURT :-

1. The respondents herein have been served by Court notice as well as by private mode, which was permitted by this Court on 8.6.2016. Affidavit of service has been filed. The respondents have not entered an appearance, either through an Advocate or in person.
2. The petitioners are aggrieved by the judgment and award dated 21.3.2016 delivered by the Industrial Court Latur in Complaint (ULP) No.54 of 2015, by which the complaint has been allowed and the petitioners have been directed to grant 10% rise in honorarium to respondent No.1 complainant from 2014. Interest at the rate of 6% p.a. has also been awarded.
3. After considering the pleadings of the parties, the Industrial Court while dealing with the other issues, has also dealt with the

issue of whether the complainant is a “workman” under Section 2(s) of the Industrial Disputes Act and as to whether the petitioner No.1 and the other respondents in the complaint were an “industry” under Section 2(j) of the said Act.

4. The complainant had pleaded in her complaint that she was working as a Center Manager with the respondents. The Community Managed Resource Center (“CMRC”) is a creation of the “State”. It is a company registered under the Indian Companies Act, 1956 and is a non-profit making undertaking of the State Government. The object is to uplift women, who are living below poverty line. Various schemes of the State are said to be implemented through the petitioner. It is, therefore, contended that the petitioners would not fall within the definition of “industry”.

5. It is also contended that the complainant was a Center Manager and therefore, not a “workman”. She had supervision and control over the “Sahayogini” appointed at different centers. The Center Manager, therefore, would not be a “workman”.

6. In so far as the claim of the complainant is concerned, it is submitted that the Circular No.25, dated 19.8.2013, issued by the petitioners, is accompanied with a chart of the District Wise Centers, with reference to which, 10% rise in the monthly honorarium has

been approved. However, the case of the complainant would not be covered by the said Circular since Respondent No.2 - CMRC has not been included in the said Circular. The CMRC - respondent No.3 in the complaint and respondent No.2 in this petition, is not held as a CMRC entitled for such rise. As such, as respondent No.2 CMRC was excluded from the said circular, none of the employees working in the said CMRC could demand a rise of 10% in the honorarium.

7. With the assistance of the learned Advocate for the petitioners, I have gone through the impugned judgment.

8. In so far as the issue of jurisdiction is concerned, rather than the complainant furnishing her job profile so as to be considered while deciding her status, the Industrial Court has concluded that, "There is no evidence in respect of nature of work of the complainant brought on record by the respondents. There is no reason to dis-believe the version of complainant that she was appointed as a "Sahayogini" and since July 2010 she was appointed as Center Manager and the decision of the centers were taken by the Chairman of the centers."

9. It is trite law that though the pay structure and designation of an employee would not be relevant for deciding whether he / she is a "workman", the nature of duties are significant, as has been held by

the learned Division Bench of this Court in the matter of Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Ltd. [2010 II CLR 121 = 2010(3) Mh.LJ 434].

10. I find that neither of the parties have led proper evidence in order to assist the Industrial Court in deciding issues Nos.3 to 5, inasmuch as, the Industrial Court had merely believed the statement made by the complainant and has proceeded on the assumption that she is a “workman”.

11. Notwithstanding the above, the Industrial Court has referred to Circular No.25 at Exhibit U/8. Without taking note of the fact that respondent No.2 herein, which is the CMRC - respondent No.3 before the Industrial Court has been excluded from the said circular, the complaint has been allowed. It appears upon going through paragraph Nos.9 and 10 of the said judgment that the relevant aspects were not placed on record before the Industrial Court by the respondents.

12. In the light of the above, this petition is partly allowed and the impugned judgment dated 21.3.2016 is quashed and set aside. Complaint (ULP) No.64 of 2015 is remitted to the Industrial Court, Latur by permitting the litigating sides to lead additional documentary and oral evidence and especially in relation to issue

Nos.2 to 5 as framed by the Industrial Court. It is expected that the Industrial Court, after recording of evidence, shall decide the issues, without being influenced by the impugned judgment, which is now set aside.

13. On account of the laxity of the petitioners in conducting the case before the Industrial Court, which has led to this situation, I am imposing costs of Rs.25,000/- (Rs. Twenty Five Thousand only/-) on the petitioners. Since none of the respondents have appeared in the matter, the said costs shall be deposited with the High Court Legal Services Authority, Sub-Committee, Bench at Aurangabad, within a period of four weeks from today and a receipt of having deposited the amount shall be produced before the Industrial Court, Latur.

(RAVINDRA V. GHUGE, J.)

...

akl/d