

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

WRIT PETITION NO. 8733 OF 2014

1. Saraswati Sopan Tanpure,
Age: Major, Occu.: Service
2. Shevantabai Vishnu Zirpe
Age: Major, Occu.: Service
3. Tarabai Sahebrao Chavan
Age: Major, Occu.: Service
4. Gajendra Khandu Budhe
Age: Major, Occu.: Service
5. Prakash Shukleshwar Kathe
Age: Major, Occu.: Service
6. Sampat Dnyandev Labade
Age: Maor, Occu.: Service
7. Kondiram Punjahari Pathare
Age: Major, Occu.: Service

All R/o C/o Ahmednagar Zilla
Shetmajoor Union, Trade Union Center,
Tahsil Kacheri Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

..PETITIONERS

VERSUS

1. The Superintendent,
Zillha Krushi Adhikari,
Bhutkarwadi, Savedi, Ahmednagar.
2. The Upvibhgiya Krushi Adhikari,
Upvibhag Shrirampur, Gondhawani,
Tq. Shrirampur, Dist. Ahmednagar.

3. The Phalotpadan Adhikari,
Taluka Phal Ropvatika (Gondhawani),
Tq. Shrirampur, Dist. Ahmednagar.

..RESPONDENTS

....
Mr. S.T. Shelke, Advocate for petitioners.
Mr. D.R. Korde, AGP for respondents.

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 2nd MARCH, 2016

ORAL JUDGMENT :

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

2. The issue raised by the petitioners-employees is as to
'whether the grant of permanency by the Industrial Court with
arrears and all monetary benefits, would also include payment of
wages for the period during which the petitioners had not worked
and had not earned their wages?'

3. The petitioner is aggrieved by the judgment of the Labour
Court dated 11.07.2014 by which Application IDA No. 2/2006

seeking recovery of money due from an employer, has been dismissed.

4. Mr. Shelke, learned Counsel for the petitioners strenuously criticizes the impugned judgment of the Labour Court. He contends that these petitioners were parties to Complaint ULP Nos. 218/1992 and 15/1997 which were filed before the Industrial Court, Ahmednagar through their union viz. Ahmednagar Zillha Shetmajoor Union, Shrirampur under the M.R.T.U. & P.U.L.P. Act, 1971. These complaints were allowed by the Industrial Court by its judgment dated 28.04.2003. The Industrial Court directed the respondents to forward the proposals of the petitioners for confirmation and the deemed date for confirmation was 28.04.2000 which is three years prior to delivering the judgment dated 28.04.2003.

5. Mr. Shelke further submits that the respondents preferred Writ Petition Nos. 4806/2003 and 4807/2003 for challenging the judgment of the Industrial Court. By judgment dated 14.01.2004, both the writ petitions filed by the respondents were dismissed.

6. He submits that since the respondent-establishment did not pay all the arrears as directed by the Industrial Court, it preferred Application IDA No. 2/2006 under Section 33(C)(2) of the Industrial Disputes Act, 1947 claiming recovery of money due from the employer. He submits that the Labour Court has considered that the respondent had paid the dues only to some extent to the petitioners. However, though the arrears to be paid for the period 24.08.2000 till 15.10.2005, has not been paid, the Labour Court has rejected the application of the petitioners.

7. Mr. Shelke has taken me through the impugned judgment and the record available to contend that the impugned judgment is perverse and erroneous.

8. He further submits that when the Industrial Court directed payment of arrears, it was in relation to the period from 28.04.2000 onwards. It is insignificant as to whether the petitioners worked in the said period or have not been working for a particular period falling in between 28.04.2000 till 2005.

9. Mr. Shelke further submits that once the Industrial Court has directed the payment of arrears, it is not open for the respondents to consider whether the period during which no work was offered to the petitioners, should be exempted from the payment of arrears. He submits that the petitioners did not voluntarily stop working. It was the respondent-employer who prevented them from working for a period beyond their control and hence, the respondent has deprived them of the wages for the period during which the petitioners had not worked. He therefore prays for setting aside the impugned judgment and for remanding the application for a rehearing to the Labour Court.

10. The learned AGP appearing on behalf of the respondents has supported the impugned judgment. He contends that the direction of the Industrial Court to pay arrears would not include the period in which these petitioners have not worked. He has referred to the conclusions of the Labour Court in the impugned judgment to contend that the amounts which were due, were paid

and since the petitioners had not worked for a particular period, the respondent is not obliged to pay salary for the said period.

11. I have considered the submissions of the learned Counsels as above.

12. The Industrial Court, while allowing the two complaints filed by the petitioners vide its judgment dated 28.04.2003, has issued the following directions :-

- “1) *The complaints are partly allowed.*
- 2) *It is hereby declared that the respondents have engaged into unfair labour practices under Items-6 and 9 of Sch-IV of the Act.*
- 3) *The respondents are directed to stop and desist from engaging such unfair labour practices.*
- 4) *The respondents are further directed to send proposal of the employees mentioned in Annexure-A to the Government immediately and after obtaining sanction within three months from the date of order, grant status and benefits of permanency to the employees mentioned in Annexure-A w.e.f. Last three years from the date of the order, and pay them arrears accordingly.*

5) *The rest of the demands raised by the complainant union stands disallowed.*

6) *No order as to costs.”*

13. This Court while dealing with Writ Petition Nos. 4806/2003 and 4807/2003 filed by the respondents has dismissed both the petitions as concluded in the last two paragraphs of its order dated 14.01.2004 as under:

“Under the circumstances, if the proposal is submitted to the Govt. by the petitioners for necessary action, the Govt. will take its decision on its merits and in case, sanction is accorded by the Govt., the above daily rated workers will be made permanent, similar to earlier daily rated workers.

The impugned order does not suffer from any illegality. The findings recorded by the Member, Industrial Court, are based on the material placed on record. Both the petitions are without merits and therefore, stand dismissed in limine.”

14. There is no dispute that these petitioners had not worked for a particular period which falls in between 28.04.2000 till 2005.

They had not earned their wages for the said period as there was no work available and as such they had not performed any duties.

15. The Labour Court in the impugned judgment has observed as under:

“The applicants also in their respective evidence at Exh.U-24 to U-30 during cross examination clearly admitted that they have received the amounts as shown in chart at page no.2 to 8 below Exh.U-9. Further, copies of orders and chart submitted at Exh.C-17, C-18, C-19, C-20, C-21, C-22, C-23, C-24, C-25 shows that the opponents have paid arrears of pay in respect of leave salary of the applicants during the period of 28.04.2000 to 30.11.2001. In short from the documents came on record filed by both parties referred above and also from the evidence came from the mouth of applicants at Exh.U-24 to U-30, evidence of P.W. No.1 Balasaheb Annasaheb Surde and also from the evidence came from the mouth of C.W. No.1 Govind Kushaba Kumkar, it reveals that the arrears of pay for the period of 28.4.2000 to 30.11.2001 have been paid to the applicants as per directions of Hon'ble Industrial Court vide its judgment and order dated 28.04.2003.

15. *The chart submitted by the applicants below Exh.U-8 shows that they have calculated arrears of pay for the period of 28.04.2000 to 15.10.2005 and shown arrears of each of the applicants in Exh.U-8/1.*

16. *As against this, the chart prepared by the opponents which are filed on record at Exh.C-17 to C-25 and Exh.C-6 page 7 to 14 shows that the opponents have calculated arrears of pay considering the tenure of applicants during which period they did work towards opponents. In short the crucial point for dispute between applicants and opponents is in respect of arrears of pay for the period of November, 2001 up to October, 2005. In this regard, as per submissions of Ld. Counsel for the applicant Mr. K.Y. Modgekar in view of the directions of Hon'ble Industrial Court, the applicants are entitled for arrears of pay for entire period though the applicants did not work during the period of November, 2001 to October, 2005. As against this, as per submissions of Ld. Counsel for the opponents Mr. A.V. Patil the applicants have not worked during said period, said dispute has not been adjudicated or entitlement of applicants has not been decided by any competent authority. Therefore, the applicants are not entitled for the same.*

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20) They cannot state all these particulars. These charts does not bear signature of these applicants. It has also come on record during cross examination of applicants that no difference of arrears of pay in respect of weekly of, Government holidays shown in the charts prepared and filed on record on their behalf. They have not filed any documentary evidence on which base these charts have been prepared. They clearly admitted that they have received arrears of pay for the period of 2000 to 2005 considering their actual working days and all arrears of pay have been paid to them. It is also admitted that the arrears of pay claimed by them has not been decided by any competent court. From these evidence came on record during cross examinations of these applicants in their respective evidence affidavit Exh.U-24 to U-30 and evidence came on record in cross examination of P.W. No.1 Saraswati Sopan Tanpure below Exh.U-13, it is quite clear that there is no any base to the calculations made by the applicants as per charts submitted below Exh.U-8.”

16. There can be no debate that the Industrial Court has granted regularisation to the petitioners with consequential benefits

inclusive of monetary benefits from 24.08.2000. However, in my view, this would not mean that the petitioners would be entitled to wages and benefits of permanency even for the days on which they have not worked.

17. The Labour Court has concluded on the basis of oral and documentary evidence before it that the respondent has paid arrears to the petitioners by calculating the same on the basis of the days they had been working in the period 2000 up to 2005. The arrears that they have been paid, have been calculated on the basis of days they have actually worked.

18. I do not find that the judgment of the Industrial Court dated 28.04.2003 can be interpreted to mean that the respondent-department should pay wages and monetary benefits to the petitioners even for the days on which there was no work available and they had not performed any work/did not work. The benefits of permanency/regularisation are to be calculated and paid for the work done, even to a permanent employee. If a permanent

employee is absent on duties and the said absence is not treated as being on leave, he can be deprived of his wages by taking into account the said absence and by invoking the principle of 'No Work - No Wages'.

19. In the light of the above, I do not find that the Labour Court has committed any error in refusing to grant arrears of wages to these petitioners for the days on which they had not performed any work with the respondent.

20. This petition is therefore devoid of merits and is dismissed.

21. Rule is discharged.

(RAVINDRA V. GHUGE, J.)