

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8598 OF 2016
WITH
CIVIL APPLICATION NO. 12615 OF 2016

Ahmednagar Forging Limited

(Now Metalyst Forging Limited)

B-20, Five Star Industrial Area,
Shendra, Tq. & Dist. Aurangabad.

... Petitioner
(Ori. First Party)

Versus

1) Ganesh Dnyandeo Dongare,
Age : 24 years, Occu: Nil,
R/o. C/o. Raghunath B. Wagh,
H.No. 2/5-11, Ramnagar, Cidco,
Aurangabad.

(Ori. 2nd Party)

2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.

3) The Collector,
Aurangabad, District Aurangabad.

4) The Circle Officer, Karmad,
Tq. and District Aurangabad.

... Respondents

WITH
WRIT PETITION NO. 8599 OF 2016
WITH
CIVIL APPLICATION NO. 12624 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area,
Shendra, Tq. & Dist. Aurangabad.

... Petitioner
(Ori. First Party)

Versus

1) Rajendra Bhimrao Ugale,
Age : Major, Occu: Nil,
R/o. Karjat, Tq. Ambad,
Dist. Jalna.

(Ori. 2nd Party)

2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.

3) The Collector,
Aurangabad, District Aurangabad.

4) The Circle Officer, Karmad,
Tq. and District Aurangabad.

... Respondents.

WITH
WRIT PETITION NO. 8600 OF 2016
WITH
CIVIL APPLICATION NO. 12616 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area,
Shendra, Tq. & Dist. Aurangabad.

... Petitioner
(Ori. First Party)

Versus

- 1) Ramchandra Abasaheb Adhav,
Age : 32 years, Occu: Nil,
R/o. 5/9/150, Pasaydan Building,
Shivaji Colony, N-2, Cidco,
Mukundwadi, Aurangabad. (Ori. 2nd Party)
- 2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.
- 3) The Collector,
Aurangabad, District Aurangabad.
- 4) The Circle Officer, Karmad,
Tq. and District Aurangabad. ... Respondents.

WITH
WRIT PETITION NO. 8601 OF 2016
WITH
CIVIL APPLICATION NO. 12617 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area, ... Petitioner
Shendra, Tq. & Dist. Aurangabad. (Ori. First Party)

Versus

- 1) Sachin Ashok Sonawane,
Age : 25 years, Occu: Nil,
R/o. H.No. 10, S.45,
Near Mukundwadi Railway Station,
Vishrantinagar, Aurangabad. (Ori. 2nd Party)
- 2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.
- 3) The Collector,
Aurangabad, District Aurangabad.
- 4) The Circle Officer, Karmad,
Tq. and District Aurangabad. ... Respondents.

WITH
WRIT PETITION NO. 8602 OF 2016
WITH
CIVIL APPLICATION NO. 13064 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area, ... Petitioner
Shendra, Tq. & Dist. Aurangabad. (Ori. First Party)

Versus

- 1) Shyam Tulsiram Dhangare,
Age : 25 years, Occu: Nil,

R/o. Plot No. 535, No. 65/P,
Ravigandhi Nagar, M. Wada,
Aurangabad.

(Ori. 2nd Party)

2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.

3) The Collector,
Aurangabad, District Aurangabad.

4) The Circle Officer, Karmad,
Tq. and District Aurangabad.

... Respondents.

WITH
WRIT PETITION NO. 8603 OF 2016
WITH
CIVIL APPLICATION NO. 12618 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area,
Shendra, Tq. & Dist. Aurangabad.

... Petitioner
(Ori. First Party)

Versus

1) Mahendra Laxman Shrikhande,
Age : Major, Occu: Nil,
R/o. Sanjay Nagar, Galli No. 6,
Mukundwadi, Aurangabad.

(Ori. 2nd Party)

2) The Deputy Labour Commissioner,

Aurangabad, Dist. Aurangabad.

- 3) The Collector,
Aurangabad, District Aurangabad.
- 4) The Circle Officer, Karmad,
Tq. and District Aurangabad. ... Respondents.

WITH
WRIT PETITION NO. 8604 OF 2016
WITH
CIVIL APPLICATION NO. 12627 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area, ... Petitioner
Shendra, Tq. & Dist. Aurangabad. (Ori. First Party)

Versus

- 1) Samadhan Machindra Ghorpade,
Age : Major, Occu: Nil,
R/o. Lamkana, Post Naigavan,
Tq. & Dist. Aurangabad. (Ori. 2nd Party)
- 2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.
- 3) The Collector,
Aurangabad, District Aurangabad.

- 4) The Circle Officer, Karmad,
Tq. and District Aurangabad. ... Respondents.

WITH
WRIT PETITION NO. 8605 OF 2016
WITH
CIVIL APPLICATION NO. 12622 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area, ... Petitioner
Shendra, Tq. & Dist. Aurangabad. (Ori. First Party)

Versus

- 1) Vishnu Ramesh Jaibhaye,
Age : 26 years, Occu: Nil,
R/o. Survey No. 25, House No. 33,
Jaibhavani Nagar, N-4, Cidco,
Aurangabad. (Ori. 2nd Party)
- 2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.
- 3) The Collector,
Aurangabad, District Aurangabad.
- 4) The Circle Officer, Karmad,
Tq. and District Aurangabad. ... Respondents.

WITH
WRIT PETITION NO. 8606 OF 2016
WITH
CIVIL APPLICATION NO. 12619 OF 2016

Ahmednagar Forging Limited

(Now Metalyst Forging Limited)

B-20, Five Star Industrial Area,

Shendra, Tq. & Dist. Aurangabad.

... Petitioner

(Ori. First Party)

Versus

1) Vijay Kundlik Thombare,

Age : Major, Occu: Nil,

R/o. At post Adgaon Pimpri Raja,

Shendra, Tq. & Dist. Aurangabad.

(Ori. 2nd Party)

2) The Deputy Labour Commissioner,

Aurangabad, Dist. Aurangabad.

3) The Collector,

Aurangabad, District Aurangabad.

4) The Circle Officer, Karmad,

Tq. and District Aurangabad.

... Respondents.

WITH
WRIT PETITION NO. 8607 OF 2016
WITH
CIVIL APPLICATION NO. 12621 OF 2016

Ahmednagar Forging Limited
(Now Metalyst Forging Limited)
B-20, Five Star Industrial Area,
Shendra, Tq. & Dist. Aurangabad.

... Petitioner
(Ori. First Party)

Versus

1) Shivaji Ananda Chaudhary,
Age : 24 years, Occu: Nil,
R/o. C/o. Kamal Rajendra Anande,
Plot No. 227, Survey No. 25,
Jai Bhavani Nagar, Aurangabad,
Tq. & District Aurangabad.

(Ori. 2nd Party)

2) The Deputy Labour Commissioner,
Aurangabad, Dist. Aurangabad.

3) The Collector,
Aurangabad, District Aurangabad.

4) The Circle Officer, Karmad,
Tq. and District Aurangabad.

... Respondents

Mr.U.S.Malte, Advocate for the petitioner.
Mr.B.R.Kaware, Advocate for respondent No.1.
Mr.P.N.Kutti, AGP for respondent Nos. 2 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 28/09/2016

ORAL JUDGMENT :

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

2. While issuing notice to the respondents in these matters, I have formulated the issues, which need to be considered. It would be apposite to reproduce the order passed by this Court on 10/08/2016 hereinbelow :-

“1. The petitioner / management in all these matters has challenged the purported ex-parte judgment and award as well as the order passed by the Labour Court dismissing the Misc. Application for restoration of the original reference proceedings, as set out in the prayer clauses at paragraphs 16B and 16C of the memo of the petition.

2. It is further submitted that revenue recovery certificates (RRC) under Section 33C(1) of the Industrial Disputes Act, 1947 have been issued. Going by the impugned award, each of the respondents herein would be entitled roughly, for an amount of Rs.3,00,000/- towards backwages. It is further stated that the petitioner / management has not implemented the impugned awards.

3. Shri Malte, learned Advocate has raised, primarily, the following three issues:-

(a) Whether the impugned awards could be sustained, considering that the same have been passed without assigning any reason and only relying upon the statement of the

workmen?

(b) Whether the impugned orders rejecting the Misc. Applications for recalling the award, have been rightly passed by the Labour Court concluding that it had become 'functus officio' after 30 days of the publication of the award?

(c) Whether the Labour Court would become 'functus officio' in the light of the verdict of the Honourable Supreme Court in the matter of Radhakrishna Mani Tripathi Vs. L.H.Patel [2009 (3) Mah.L.J. 767]?

4. *Considering the above, issue notice before admission to the respondents, returnable on 2.9.2016.*

5. *Learned AGP waives service for respondents 2 to 4.*

6. *I find that the issue raised by the petitioners by placing reliance upon the judgment in the case of Radhakrishna (supra) can be considered keeping in view that the judgment of the Honourable Supreme Court in the matter of Sangham Tape Company V/s Hansraj [(2005) 8 SCC 331], was not cited before the Honourable Supreme Court in the Radhakrishna's case (supra).*

7. *Till the next date of hearing in this matter, on the condition that the petitioner shall deposit an amount of Rs.1,50,000/- (Rs. One Lakh and Fifty Thousand/-) in each of these Writ Petitions, the respondents are restrained from resorting to coercive steps for seeking the execution*

and implementation of the impugned awards.

8. *The said amount shall be deposited in this Court, on or before 26.8.2016. Request for extension of time will not be entertained. Failure to deposit the said amount shall lead to the vacating of the ad-interim protection without reference to this Court.*

9. *The petitioner shall deposit a copy of the petition paper book for issuing notice within one week from today, failing which the ad-interim protection shall stand vacated without reference to the Court."*

3. I find it appropriate to first deal with the issue at clause "C" reproduced above as to, "Whether the Labour Court would become 'functus officio' in the light of the verdict of the Hon'ble Supreme Court in the matter of Radhakrishna Mani Tripathi Vs. L.H.Patel [2009(3) Mah.L.J.767]?"

4. The undisputed factors are as under :-

- [a] The respondents are party to the reference proceedings before the Labour Court, Aurangabad wherein they have challenged their individual terminations dated 15/02/2014 and have prayed for reinstatement with continuity of service and full back wages.
- [b] By the impugned award dated 24/04/2015, the reference proceedings were allowed keeping in view that the petitioner / first party management failed to submit its written statement,

No W.S. order was passed on 18/02/2014 and the reference cases were allowed purely on the basis of the affidavits filed by the respondents.

- [c] The awards at issue were published on 22/06/2015 by the Labour Court in accordance with the Industrial Disputes, Bombay (Rules), 1957.
- [d] On 09/09/2015, which is after about 75 days from the date of the publication of the award, the petitioner filed Misc. application for setting aside the awards.
- [e] By the impugned order dated 08/07/2016, the misc. applications filed by the petitioner were rejected.

5. Mr.Malte, learned Advocate has placed reliance upon an unreported order of this Court dated 06/09/2010 passed in WP No.8682/2009 in the matter of Rajman Shrikrishna Morya Vs. Marshal Security Pvt.Ltd., by which this Court concluded that as the second party workman himself was absent, no steps were taken and the case was dismissed, in this backdrop, there was no award at all and in the absence of any award, the misc. applications filed by the workmen could have been entertained. Since the facts in the cases in hand are distinguishable, the view taken in the judgment dated 06/09/2010 (supra), would be of no assistance to the petitioner.

6. Mr.Malte has placed heavy reliance on the judgment of the Hon'ble Supreme Court in the matter of Radhakrishna Mani Tripathi

Vs. L.H.Patel and another, [2009(3) Mh.L.J. 767 = 2009(1) Bom.C.R.72] to support his contention that the Court under the I.D.Act, 1947 would not be rendered *functus officio* considering Rule 26 of the 1957 Rules and Section 17-A of the I.D.Act. The Hon'ble Apex Court has held in paragraph No.18 and 19 as under :-

7. From the conclusions of the Hon'ble Apex Court reproduced above, it is clear that Rule 22 under the Central Rules and Rule 26(2) of the Bombay Rules were considered in the light of Section 17-A. Reliance was placed on the earlier judgment of the Hon'ble Apex Court in the matter of Anil Sood Vs. Presiding Officer, Labour Court II, 2001(10) S.C.C.534 and considering the observations in paragraph Nos.6,7 and 8 in Anil Sood (supra), the Hon'ble Apex Court concluded that there was no conflict in between Section 17-A and Rule 26(2).

8. I find that the earlier judgment of the Hon'ble Supreme Court in the matter of Sangham Tape Company Vs. Hans Raj [(2005)9 SCC 331] was not brought to the notice of the Hon'ble Apex Court wherein the judgment in the matter of Anil Sood (supra) was clarified and distinguished. It was specifically held in Sangham Tape (supra) that Anil Sood (supra) did not lay down the law to the contrary and an application for setting aside an award, made after 30 days from the

date of publication of the award, cannot be accepted.

9. Paragraph No.7 to 12 of the Sangham Tape judgment (supra) reads as under :-

“7. This Court in Grindlays Bank Ltd., Vs. Central Government Industrial Tribunal and others [(1980) Supp. SCC 420] held that the Tribunal does not become functus officio provided an application for setting aside the award is filed within thirty days of publication of award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating : (SCC pp.425-26, para 14)

“14. The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to

entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent 3, acting on behalf of respondents 5 to 17 on January 19, 1977 i. e, before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal."

8. *The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award but having regard to the provision contained in Section 17-A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.*

9. *It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labor Court after one month of the publication of the award.*

10. *In view of this Court's decision in Grindlays Bank (supra), such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of*

publication of the award. Once an award becomes enforceable in terms of Section 17-A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the gazette, the same having become enforceable, the Labour Court would become functus officio.

11. *Grindlays Bank (supra) has been followed in Satnam Verma vs. Union of India and J.K.Synthetics Ltd. V. CCE.*

12. *This Court in Anil Sood (supra) did not lay down any law to the contrary. The contention raised on the part of Mr. Jain to the effect that in fact in that case an application for setting aside an award was made long after 30 days cannot be accepted for more than one reason. Firstly, a fact situation obtaining in one case cannot be said to be a precedent for another. [See Mehboob Dawood Shaikh vs. State of Maharashtra]. Secondly, from a perusal of the said decision, it does not appear that any date of publication of the award was mentioned therein so as to establish that even on fact, the application was made 30 days after the expiry of publication of the award. Furthermore, the said decision appears to have been rendered on concession.”*

10. This Court in the matter of Dnyaneshwar Anantrao Kulkarni Vs. Supdt. Engineer, Public Works Division, Osmanabad, [2016(2) Mh.L.J. 144] has considered the effect of Rule 26 and Rule 31-A in the light of Section 17 and 17-A and has concluded that Rule 26(2) is

inconsistent with Section 17 and 17-A of the I.D.Act. The decision of the Hon'ble Apex Court in Grindlays' Bank (supra) and Sangham Tape Company (supra) was followed.

11. Considering the law as above, the issue at Clause 'C' framed in this matter stands answered. The Labour Court had therefore become *funtus officio* in the light of the view taken by the Hon'ble Apex Court in the matter of Grindlays' Bank (supra) and Sangham Tape Co. (supra). Consequentially, the issue framed at Clause 'B' is rendered redundant as the impugned order dated 08/07/2016, entertaining the misc. applications by the Labour Court, was an exercise in futility as the Labour Court was rendered *functus officio*. Hence, the said judgments impugned in this petition, are quashed and set aside and the misc. applications filed by the petitioner are rejected for being untenable.

12. In so far as the challenge of the petitioner to the judgments of the Labour Court dated 24/04/2015 in Ref.(IDA) No.61/2014, 66/2014, 63/2014, 64/2014, 62/2014 and 27/04/2015 in Ref.(IDA) Nos.65/2014, 67/2014, 68/2014, 70/2014, 69/2014 are concerned, the petitioner strenuously submits that these awards are based only on the affidavit filed by the respondents. Though the petitioner in all these matters before the Labour Court had engaged an advocate, the

matters virtually went unrepresented. No written statement was filed. The affidavits filed by the respondents were not subjected to cross-examination and as such the Labour Court simply relied upon the affidavits of the workers and allowed the reference cases.

13. It is further submitted that the termination orders dated 15/02/2014 were served upon each of these respondents. Reasons were set out in the said orders indicating as to why it was not possible for the management to conduct domestic enquiries under the Model Standing Orders. Considering the explosive situation, the petitioner decided to dispense with conducting the enquiry. When this order was before the Labour Court, notwithstanding that the petitioner was not participating in the proceedings, the Labour court should have considered that the respondents/workmen were dismissed for having committed grave and serious misconducts. Merely by concluding that they have completed 240 days in continuous service and Section 25-F was not complied with, the Labour Court could not have granted reinstatement.

14. Mr.Kaware, learned Advocate for the respondents/workers submits that there are about 700 workers working with the petitioners. Only 150 workers are permanent. On 30/11/2013, a

settlement was signed by the Management and only 58 workers were granted coverage and benefits of the settlement. 90 workers joined the Bhartiya Kamgar Union on 02/02/2014. Immediately, 20 workers were transferred. This court has delivered a verdict and has set aside those transfer orders. These are the reasons due to which the petitioner terminated 10 workers, who are respondents herein, on 15/02/2014 without conducting an enquiry.

15. He further submits that the Labour Court issued notices to the petitioner in all these matters and after service, proceeded to decide the reference cases due to the non co-operation of the petitioner. Even in conciliation proceedings, the petitioner did not co-operate and tried to frustrate the workers. In this backdrop, he submits that these petitions be dismissed with costs.

16. In the alternative, by placing reliance upon the judgment of the Gujarath High Court in the matter of Bharat Co-operative Bank Ltd., Vs. K.L.Baria, Judge, Labour Court, (1998) 1 Guj.Law Reporter 850. he submits that if this Court is inclined to remand the reference cases for a fresh adjudication, subsistence allowance be paid to each of these respondents till the cases are decided because the employer would make an attempt to delay the matter and tire out the workers.

17. In the light of the submissions of the learned Advocates, I have gone through the impugned awards. It is only in a short paragraph by way of reasons that the Labour Court has allowed the reference cases on the ground that the workers had filed an affidavit and hence there is no reason to disbelieve their contentions as the employer has not contradicted the evidence.

18. In my view, the Labour Court should have considered the reasons set out in the order of termination and based on the same, it should have viewed the case more seriously. Merely because the respondent has not led evidence, cannot be a ground for allowing the reference cases. Moreover, the Labour Court has concluded that since the workers have completed 240 days in employment, the termination is bad in law as Section 25-F of the I.D. Act, 1947 was not complied with. The issue before the Labour Court was not about continuous service u/s 25-B and much less as regards Section 25-F. Issue was as regards the petitioner being unable to conduct an enquiry on account of the purported explosive situation and hence the workers were dismissed by way of punishment.

19. The claim of the respondents for subsistence allowance during

the pendency and adjudication of the reference cases, cannot be entertained in view of the law laid down in Mumbai Cricket Association Vs. Pramod G.Shinde, 2011 (1) CLR 745.

20. Considering the above, I find that the impugned order deserves to be set aside by imposing costs upon the petitioner/Management since due to its laxity and negligence, the proceedings before the Labour Court have been concluded by the non-participation of the petitioner. While issuing notice, the petitioner was directed to deposit Rs.1,50,000/- in each case. The amount has been deposited.

21. In the light of the above, these petitions are partly allowed. The impugned awards dated 24/04/2015 and 27/04/2015 are quashed and set aside. All these reference (IDA) Nos. 61/2014, 62/2014, 63/2014, 64/2014, 65/2014, 66/2014, 67/2014 68/2014, 69/2014, 70/2014 are remanded to the Labour Court for fresh adjudication on the following conditions :-

- [a] The amount of Rs.1,50,000/-, deposited by the petitioner in each of these cases, will be withdrawn by the petitioner with accrued interest and the amount of Rs.1,50,000/- shall be deposited before the Labour Court in each of these reference cases on or before 15/10/2016.
- [b] The litigating sides shall appear before the Labour Court, Aurangabad on 14/10/2016 and formal notices need not be issued.

- [c] Each of these respondents/workmen shall withdraw Rs.25,000/- from the Labour Court without conditions as costs for the rigours of litigation suffered by them on account of the remanding of these matters.
- [d] If the abovesaid directions for depositing money are not complied with by the petitioner on or before 15/10/2016, the Labour Court shall strike of the defence of the petitioner and thereafter decide the reference cases on the material available before it.
- [e] If the above stated conditions are complied with, the petitioner / Management shall file their written statements alongwith documents as well as a charge sheet keeping in view its contentions, on or before 21/11/2016, failing which the Labour Court shall pass 'No Written Statement Order' and shall proceed further.
- [f] After the compliance of the above directions, considering that the petitioner desires to conduct an enquiry before the Labour Court, the recording of evidence shall begin at the instance of the petitioner.
- [g] The Labour Court shall endeavour to decide the reference cases, as expeditiously as possible and preferably on or before the end of December 2017.

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

23. In the light of the above, the civil applications do not survive and stand disposed of.

(RAVINDRA V. GHUGE, J.)