

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

WRIT PETITION NO. 2119 OF 2016

JAIBHAVANI SAHAKARI SAKHAR KARKHANA LTD. THROUGH ITS
MANAGING DIRECTOR.

VERSUS

BIBHISHAN MAROTIRAO DETHE

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Advocate for Petitioner : Shri Shahane Pradeep L. and Shri Parag Shahane.

Advocate for Respondent : Shri Ghute Patil Kishor J..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th November, 2016

Per Court:

1 I have heard the learned Advocates for the respective sides for quite sometime. Shri Shahane, learned Advocate for the Petitioner, has strenuously criticized the impugned judgment.

2 In an identical set of facts involving this very Petitioner Sugar Factory in Writ Petition No.3696/2016 (*Jaibhavani Sahakari Sakhar Karkhana Ltd. vs. Baban Achyuttrao Kulkarni*), I have allowed the said Writ Petition by the judgment dated 17.10.2016 by concluding that whether, the closure is legal or not? and whether, the wages for an illegal closure would be payable or not?, cannot be gone into by the Labour Court in an application under Section 33-C(2) of the Industrial Disputes Act, 1947.

3 Shri Ghute Patil, learned Advocate for the Respondent, however, points out the settlement dated 04.02.2005, which was arrived at between the Petitioner Sugar Factory and the Jaibhavani Sahakari Sakhar Karkhana Kamgar Sanghatana (Intuc), by which the benefits of the lay off were to be extended to those employees whose names are mentioned in Annexure A or Annexure B to the said settlement.

4 However, it appears that the said settlement was not pointed out to the Labour Court inasmuch as it needs to be adjudicated upon as to whether, the said settlement was in relation to a lay-off or whether, it was in relation to the closure from July, 2004 to October, 2005. Such disputed questions cannot be gone into by the Labour Court under Section 33-C(2) of the Industrial Disputes Act, 1947.

5 In the light of the above and akin to the judgment dated 17.10.2016 passed by this Court, the impugned judgment of the Labour Court dated 06.08.2015 is quashed and set aside and consequentially, this Writ Petition is partly allowed.

6 It be noted that the impugned judgment of the Labour Court dated 06.08.2015 is set aside only to the extent of the claim of the

Respondent for wages for the period July, 2004 to October, 2005.

7 Needless to state, the Respondent would be at liberty to initiate an appropriate proceeding for challenging the closure from July, 2004 to October, 2005. Time spent by the Respondent in litigation before the Labour Court as well as before this Court shall be a good ground for condonation of delay, if any. In the event, a fresh proceeding is initiated by the Respondent for the above purpose, the competent court shall decide the said issue and the claim of the Respondent on its merits. All contentions raised in the application under Section 33-C(2) of the Industrial Disputes Act, 1947 are kept open.

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(RAVINDRA V. GHUGE, J.)