

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

REVIEW APPLICATION NO. 190 OF 2016
IN
WRIT PETITION NO.4211 OF 2002

VICE PRESIDENT, MARATHWADA SARVA SHARMIK SANGAHTNA
THROUGH TRADE UNION CENTRAL ARYA SAMAJ, LATUR.

VERSUS

THE SABHAPATI, KRISHI UTPANNA BAZAR SAMITI, AUSA, LATUR.

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Advocate for Applicant : Shri Manale Satish S.

Advocate for Non Applicant : Shri S.J.Salgare.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th November, 2016

Per Court:

1 The Applicant has moved this Review Application on the ground that though this Court has dismissed the writ petition filed by the Respondent/ Establishment by its judgment dated 28.07.2016, the observations in paragraph 10 were uncalled for. The Applicant has already superannuated on 14.03.2008 after the judgment of the Industrial Court dated 09.08.2002 was delivered. By order dated 02.12.2002, the judgment of the Industrial Court was stayed by this Court on the condition that the Applicant would be offered the work as and when it is available.

2 Shri Manale, learned Advocate for the Applicant, submits that

the Respondent/ Establishment did not offer him any work though he had agreed to settle the dispute as like Mr.Suresh Kusumkar and Mr.Hemant Jadhav. He, therefore, submits that when this Court has dismissed the petition filed by the Respondent/ Establishment challenging the Industrial Court's judgment, the Applicant would have been entitled to back wages from the date of the Industrial Court's judgment dated 09.08.2002 till the date of his retirement 14.03.2008. The observations in paragraph 10 practically take away the benefits given to the Applicant despite the petition having been dismissed and thereby, despite the dismissal of the petition, the Respondent/ Establishment has effectively gained advantage.

3 Shri Salgare, learned Advocate for the Respondent/ Establishment, has strenuously opposed the review petition. He submits that since there was no work available, there was no question of offering work to the Applicant. He further submits that the impugned judgment of the Industrial Court was stayed by this Court on 02.12.2002 by directing the Establishment to offer the work to the Applicant whenever it is available. He, therefore, submits that no back wages are required to be paid to the Applicant despite the dismissal of the petition since this Court had stayed the judgment.

4 I have considered the submissions of the learned Advocates.

5 There is no dispute that Writ Petition No.4211/2002 filed by the Establishment has been dismissed and the judgment of the Industrial Court dated 09.08.2002 was sustained. It was only in the light of the order of this Court dated 02.12.2002 that I had made the observations in paragraph 10 of the judgment under review.

6 I find that there is merit in the submissions of Shri Manale that the observations in paragraph 10 would be detrimental to his interest.

Paragraph 10 reads as under:-

"10. *In the event the said Ratansingh Thakur is presently being engaged in employment, the petitioner shall continue to engage him. In the event he has not reported for work and if he reports for work pursuant to this judgment, the same shall be on the same terms of waiver of back wages as directed by the Industrial Court, till the date on which he resumes duties.*"

7 There appears to be a peculiar situation. Though the Applicant has succeeded after the Writ Petition has been dismissed, he practically stands nothing to gain because this Court by order dated 02.12.2002 deprived him of regular work and now that judgment of the Industrial Court has been sustained, he has not earned a single penny owing to the observations made in paragraph 10 reproduced above.

8 In the light of the above, I find that my observations in paragraph 10 were not required. Nevertheless, the Applicant has not worked during the period 09.08.2002 till 14.03.2008. Had the judgment of the Industrial Court not been stayed, probably he would have been reinstated. In order to ensure that ends of justice are met, I deem it proper to quantify the compensation so that the Applicant would stand to gain as the petition filed by the Establishment has been dismissed.

9 The Applicant has worked for about four years and nine months prior to his termination w.e.f. 15.07.1988. His Complaint (ULP) No.52/1988 was allowed by the Labour Court on 04.02.1993. The said judgment was modified by the Industrial Court by judgment dated 09.08.2002. His last drawn wages were at the rate of Rs.250/- per month. Considering the same, even if 25% back wages are to be paid to the Applicant for the period of about six years from the date of the judgment of the Industrial Court till his attaining the age of superannuation in March, 2008, I find that an amount of Rs.1 lac would be sufficient compensation keeping in view the judgment of the Honourable Supreme Court in the matter of *Gauri Shanker vs. State of Rajasthan*, **2015 (II) CLR 497**.

10 In the light of the above, this Review Petition is, therefore,

partly allowed. The observations made in paragraph 10 of the judgment dated 28.07.2016 are recalled and replaced by grant of quantified compensation of Rs.1 lac which the Respondent/ Establishment shall pay to the Applicant within a period of TWELVE WEEKS from today, failing which interest @ 3% per annum shall be paid from August, 2002 till actually paid. The said amount of interest shall be paid personally by the Sabhapati of the APMC and not by the APMC.

kps

(RAVINDRA V. GHUGE, J.)