

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9556 OF 2014

Shrirampur Taluka Kapus Utpadak
Sahakari Sutgirni Maryadit,
Shrirampur, Tq. Shrirampur,
Ahmednagar, through its
Liquidator / Collector, Ahmednagar. ..Petitioner

Versus

1. Nisar Sajan Patel,
Age major, Occ. Agriculture,
R/o Fatyabag, Tq. Shrirampur,
District Ahmednagar.

2. The Assistant Commissioner
of Labour, Ahmednagar.

3. Tahsildar and Taluka
Executive Magistrate,
Shrirampur, Dist. Ahmednagar. ..Respondents

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Advocate for Petitioner : Shri Suryawanshi Nitin B.
Advocate for Respondent 1 : Shri Barde Parag Vijay
AGP for Respondents 2 & 3 : Shri Korde D.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 09, 2016
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is
taken up for final disposal.

4. The petitioner is aggrieved by the impugned order dated 7.10.2013, which is a Revenue Recovery Certificate ("RRC") issued by the Assistant Commissioner of Labour, Ahmednagar in the light of the judgment of the Labour Court dated 31.10.2006 under Section 33-C(2) of the Industrial Disputes Act, 1947.

5. Shri Suryawanshi, learned Advocate for the petitioner has severely criticized the impugned certificate on the ground that though respondent 1 employee could be treated to be on duty, pursuant to the judgment of the Labour Court dated 31.10.2006 in Complaint (ULP) NO.69 of 1990, he would, at the most, be presumed to be in employment along with similarly situated employees only till 26.3.1994, when the petitioner society went into liquidation and thereafter, there was no business activity.

6. He submits that the termination of respondent No.1, w.e.f. 27.3.1990 has been set aside by the Labour Court and he has been granted reinstatement with continuity of service and 50% backwages. The society upon getting into liquidation, discharged all the employees w.e.f. 23.6.1994. Consequentially, all the concerned employees were paid their discharge compensation. Even if respondent No.1 employee is presumed to be in employment by virtue of the judgment of the Labour Court, he would have also been discharged on 23.6.1994.

7. He further submits that the failure of the petitioner to challenge

the judgment of the Labour Court dated 31.10.2006 would not mean that respondent No.1 employee would continue in employment when all other employees have been discharged from 23.6.1994. He, therefore, submits that the backwages were calculated by the petitioner upto 23.6.1994 and the same have been paid to the said employee. There is no dispute about the amount of Rs. 52,783/- having been paid to him.

8. He submits that the impugned certificate has been mechanically issued by the competent authority without taking into consideration the fact that the petitioner has gone into liquidation and hence the recovery of dues, if payable by the petitioner to respondent No.1 would be restricted to the date 23.6.1994 on which, all employees were discharged. He, therefore, prays for setting aside the impugned recovery certificate.

9. Shri Barde, learned Advocate vehemently submits that neither has the petitioner challenged the judgment of the Labour Court dated 31.10.2006, nor has it challenged the judgment delivered in Application (IDA) No.23 of 2013. He, therefore, submits that the petitioner is precluded from questioning the recovery certificate.

10. In the alternative, he submits if all other employees were discharged on 23.6.1994, the petitioner would be required to pay bonus for an amount of Rs.57,800/-, gratuity of Rs. 33346/- and earned leave wages of about Rs.8,000/-. Respondent No.1 employee is litigating for

the past about 20 years. Discharge compensation would have been payable in 1994. Had this aspect been brought to the notice of the Labour Court, further litigation and the sufferings of respondent No.1 could have been avoided. He, therefore, prays that this petition be dismissed with costs.

11. I have considered the submissions of the learned Advocates.

12. The learned Division Bench of this Court has passed an order on 26.6.2014 in the petition filed by respondent No.1 employee that after the recovery certificates are issued, the concerned authorities would take steps for recovering the said amount.

13. The fact, however, remains that the employees similarly situated as like respondent No.1 have been discharged from employment and have collected their discharge compensation in 1994. The impugned certificate has been issued in the light of the claim made by the employee till 2013. Had he been in employment and even going by the judgment of the Labour Court, if it is presumed that he is in employment, he would have been discharged from service as like the other employees on 23.6.1994. The calculation of all dues payable by the petitioner to respondent No.1 would, therefore, have to be restricted to the date on which all other employees were discharged and which is said to be 23.6.1994.

14. If the unpaid amounts of bonus, gratuity and earned leave wages till June 1994 are taken into account, the petitioner would have to pay Rs.1,00,000/- to the employee. Said amount has already been deposited in this Court by the petitioner pursuant to the order dated 3.11.2014 passed by this Court. Simple interest to be paid on the said amount will also have to be quantified considering the fact that respondent No.1 employee has been litigating for the past about 20 years.

15. Taking into account the above facts of the case, the impugned certificate dated 7.10.2013 is modified with the direction to the petitioner to pay an amount of Rs.1,25,000/- to the respondent No.1 employee. Consequentially, respondent No.1 would be at liberty to withdraw the amount of Rs.1,00,000/- with accrued interest from this Court. In addition thereto, the petitioner shall pay an amount of Rs.25,000/- to respondent No.1, within a period of six weeks from today.

16. This petition is, therefore, partly allowed by modifying the impugned Revenue Recovery Certificate as above and the Rule is made partly absolute, accordingly. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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