

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3696 OF 2016

Jaibhavani Sahakari Sakhar
Karkhana Ltd.,
Through its Managing Director,
Shivaji Nagar, Gadhi,
At Gadhi, Tq. Georai,
District Beed

-- PETITIONER

VERSUS

Baban S/o Achyutrao Kulkarni,
Age-63 years, Occu-Retired Employee,
R/o "Vyankatesh Nivas", S.B.I. Colony,
Behind Shantai Hotel, Jalna Road,
Beed, At Post, Tq. and Dist.Beed

-- RESPONDENT

Mr.P.L.Shahane with Mr.Parag Shahane, Advocate for the petitioner.
Mr.M.S.Indani, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/10/2016

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the judgment of the Labour Court dated 26/10/2015 delivered in Appl. (IDA) No.14/2012 on the following two grounds :-

[a] A claim for gratuity could not have been entertained by

the Labour Court under Section 33(C)(2) of the I.D.Act, 1947.

- [b] Payment of wages during the closure period from July 2004 till October 2005, without the closure being declared as illegal, could not have been granted by the Labour Court.

3. I have considered the submissions of Mr.Shahane and Mr.Indani, learned Advocates for the petitioner and the respondent/ employee. With their assistance, I have considered the petition paper book and have gone through the impugned judgment.

4. In so far as the claim of the respondent/employee to the extent of the unpaid part of the gratuity amount is concerned, the petitioner has admitted in paragraph Nos.5 and 6 of the written statement Exhibit C-4 that Rs.1,15,000/- towards gratuity has already been paid to the respondent. Due to paucity of funds, he was to receive the balance amount of Rs.50,000/- subsequently. He did not come to the factory to receive his balance amount and therefore the said amount was not paid. He is hence not entitled for interest on the said amount.

5. Considering the above categoric stand taken in the written

statement, I am not inclined to entertain this petition as regards the contention that the claim of gratuity is untenable before the Labour Court, since the petitioner has itself declared that there is no legal impediment in not paying the remainder portion of gratuity and had the employee approached it, the said amount would have been paid.

6. Learned Advocate for the respondent submits that he is entitled for interest on the unpaid amount of Rs.50,000/- w.e.f. 01/05/2012 since the Management did not pay him the remainder portion of gratuity despite his several attempts and efforts. It is pointed out from the impugned order that the Labour Court has concluded that the employee was continuously demanding the payment of the amount through his applications Exh.U-6/5 and U-6/6. It also appears from the statement produced by the petitioner at Exh.C-6/1 that an amount of Rs.51,484/- is to be paid by the petitioner to the employee. The Labour Court has granted 12% interest from 01/11/2005, when the gratuity had become payable.

7. It is apparent that the gratuity amount to the extent of Rs.51,484/- is outstanding and if the gratuity amount is not paid when it becomes payable, the employer is mandated to pay interest under Sub Section 3-A of Section 7 of the Payment of Gratuity Act,

1972. The interest is as per the rates prescribed by the Central Government under long term deposit schemes which is 10%. I am, therefore, partly allowing this petition to the extent of reducing the interest on the gratuity amount from 12% to 10% which the petitioner shall pay from 01/05/2012 as is granted by the Labour Court. This amount of 51,484/- alongwith 10% interest from 01/05/2012, shall be paid within a period of 8 (eight) weeks from today.

8. In so far as the claim of the respondent for 16 months wages is concerned, the petitioner has taken a specific stand in paragraph No.5 of the written statement that the factory was closed from July 2004 to October 2005. The issue of legality of a closure needs to be adjudicated upon and the claim of the employee for wages during the closure period could be entertained only if the closure is held to be illegal. Needless to state, the issue of closure cannot be gone into by the Labour Court u/s 33(C)(2) of the I.D.Act. This petition, therefore, deserves to be partly allowed to the extent of the grant of wages by the Labour Court under Section 33(C)(2) without any decision on the legality of the closure by a competent Court.

9. As such, this petition is partly allowed. The impugned

judgment of the Labour Court dated 26/10/2015 is set aside to the extent of the claim of the respondent for wages for the period July 2004 to October 2005. Consequentially, Application (IDA) No.14/2012 stands partly allowed only to the extent of the unpaid portion of gratuity and interest as noted above.

10. Needless to state, the respondent will be at liberty to initiate appropriate proceedings for challenging the closure from July 2004 to October 2005, as stated by the petitioner in its written statement. In the event, such proceeding is initiated, the competent Court shall decide the said issue and the claim of the respondent on its merits considering the observations of this Court in this judgment.

11. Learned Advocate for the respondent makes a statement that he would amend his pending Complaint (ULP) No.59/2016 for challenging the closure and would not press the claim for recovery of gratuity since this Court has directed the payment in this judgment.

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

(RAVINDRA V. GHUGE, J.)