

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 14989 OF 2016
IN
WRIT PETITION NO. 6001 OF 2014

BAPU VITTHAL HOLE
VERSUS
INDIRA GANDHI NAGARI SAHAKARI PATSANSTHA AND ANR

Advocate for Petitioner : Shri V. P. Golewar
h/f. Shri A. R. Joshi.
Advocate for Respondent : Shri P. V. Barde

CORAM : RAVINDRA V. GHUGE, J.
Dated: December 02, 2016

PER COURT :

1. The applicant/original respondent prays for vacating the interim stay granted to the order of the Industrial Court vide order dated 27/10/2015.

2. I have heard the learned advocates for the applicant and the respondent/original petitioner for quite some time. This court had ordered on 16/09/2015 as under:

(1) Mr. A.V. Patil along with Mr. A.R. Joshi appears on behalf of the sole respondent. The petitioners have challenged the judgment and order dated 21/10/2013 delivered by the Industrial

Court in Complaint (ULP) No. 15/2009. Difference in wages as per the Minimum Wages Act, have been directed to be paid from 01/01/1991 with interest @ 10% p.a.

(2) Mr. Patil submits that despite the impugned judgment is delivered on 21/10/2013, same has not been complied with, in as much as the respondent is being refused employment orally.

(3) Stand over to 09/10/2015 at 2.30 p.m. Parties to note that this matter would be heard finally at the admission stage.

(4) The respondent shall not seek implementation of the impugned judgment on the condition that the petitioners deposit an amount of Rs.4,00,000/- (Rs. Four lac only) in this Court on or before 07/10/2015. Needless to state, failure to comply with this order, shall result in vacating the ad-interim protection without reference to this Court.

3. On 27/10/2015, a further order was passed as follows:

(1) The petitioners are aggrieved by the judgment and order dated 21.10.2013, delivered by the Industrial Court in Complaint (ULP) No. 15 of 2009. The Complaint has been allowed and the petitioners are directed to grant the benefits incidental to permanency from 1.1.1991 and pay the difference in wages by taking into account the minimum wages payable to the respondent.

(2) Grievance of the petitioner is as follows:-

(a) The respondent was appointed as a Secretary in 1989.

(b) He was terminated with effect from 22.2.1994 on account of charges leveled upon him.

- (c) No enquiry was conducted against the respondent.*
- (d) By judgment of the Labour Court, dated 8.2.2001, the Complaint (ULP) No. 56 of 1994, preferred by the respondent was allowed partly and the respondent was granted reinstatement with continuity of service and 25% backwages.*
- (e) Revision (ULP) No.13 of 2001 filed by the petitioner was dismissed by judgment dated 24.1.2003 delivered by the Industrial Court.*
- (f) Writ Petition No. 2625 of 2003, filed by the petitioner was dismissed by order dated 29.3.2004.*
- (g) Special Leave Petition No. 11649 of 2004, filed by the petitioner was dismissed by the Honourable Supreme Court.*
- (h) The respondent preferred Complaint (ULP) No.15 of 2009 on 7.3.2009 before the Industrial Court, claiming permanency and incidental benefits.*
- (i) The petitioners objected to the maintainability of the Complaint on the ground that the respondent is not a workman and the complaint was barred by limitation.*
- (j) Less than nine persons were engaged as employees and hence the Industrial Disputes Act, 1947 and the Minimum Wages Act are not applicable.*
- (k) Service Rules and duties of a Secretary were filed before the Industrial Court.*
- (l) By judgment dated 21.10.2013, the Complaint filed by the respondent has been allowed.*
- (m) Though the issue of workman has been raised the same*

has been casually dealt with.

(n) The documents indicating the nature of duties of the respondent were not looked into.

(o) Issue as regards delay was also not considered and the Complaint has been allowed.

(2) Shri Patil, learned Advocate submits as under:-

(a) The petitioners had terminated the respondent and the judgment of the Labour Court allowing the respondent's complaint has been sustained upto the Apex Court.

(b) Issue of qualification of the respondent was raised before this Court in the earlier round and the petitioners contended that the respondent was not qualified to the post on which he has been appointed.

(c) Despite the earlier round of litigation, right upto the Apex Court, the petitioner has not raised the issue that the respondent is not a workman before the Labour Court, Industrial Court, this Court as well as the Apex Court.

(d) More than Rs. 5,00,000/- are required to be paid by the petitioners as difference in the wages paid and those which are required to be paid under the Minimum Wages Act for the past 24 years.

(e) The respondent is surviving on paltry wages of Rs.1000/- per month and the petitioners are attempting to tire out the respondent by continuously engaging him in litigation.

(4) I have considered the submissions of the learned Advocates as recorded herein above. Issue as to whether the respondent is a

“workman” has been raised before the Industrial Court. Contention of the respondent is that the said issue was not raised at any time by the petitioners in the earlier rounds of litigation and hence it needs to be construed that the petitioners have given up their challenge to the status of the respondent.

(5) Considering the fact situation as above, this petition deserves consideration.

(6) Rule.

(7) By way of interim relief, the impugned judgment of the Industrial Court dated 21.10.2013 shall stand stayed till the disposal of this petition on the condition that the petitioners shall deposit an amount of Rs.6,00,000/- in this Court within a period of ten weeks from today, failing which the interim protection granted shall not be continued during the pendency of this petition.

(8) In the event, the respondent moves an application for withdrawal of any amount, the same shall be decided on its merits. Until then, the amount of Rs.4,00,000/- already deposited and further amount of Rs. 6,00,000/- to be deposited shall be invested in a Nationalised Bank by the Registry for the initial period of six months.

(9) Needless to state, the petitioners would be duty bound to pay minimum wages as prescribed in law to the respondent, failing which the respondent would be at liberty to seek further orders in this matter, including vacating the interim relief.

4. As such, the original petitioner/management was obliged to deposit Rs. 10,00,000/- (Rs. Ten lac only) in this court and start paying minimum wages to the applicant/employee from the date of his reinstatement. Rs. 4,00,000/- (Rs. Four lac only) have been deposited and the same have been allowed to be withdrawn (by the applicant) by order dated 25/11/2016 in Civil Application No. 15022/2016.

5. The respondent/management was, therefore, obliged to deposit another Rs. 6,00,000/- (Rs. Six lac only) and start paying minimum wages to the applicant/employee.

6. Considering the above, this application is partly allowed with the following directions:

(A) The respondent/management shall deposit the residual amount of Rs. 6,00,000/- (Rs. Six lac only) in this court on or before 14/12/2016 and shall commence the payment of minimum wages to the applicant forthwith.

(B) If the amount as directed is not deposited and/or if the minimum wages are not paid to the applicant/employee, the interim protection granted by order dated 27/10/2015 shall stand vacated and the applicant/employee would be at liberty to initiate

steps for recovery of the said residual amount and for seeking payment of minimum wages.

(RAVINDRA V. GHUGE, J.)

S.P.C.