

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12096 OF 2016

Sangitabai W/o. Bhaskar Kamble,
Age. 35 years, Occ. Nil,
R/o. Nagsen Nagar, Osmanpura,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12097 OF 2016

Sundarbai W/o. Suryabhan Mhaske,
Age. 40 years, Occ. Nil,
R/o. Jaybhim Nagar, Town Hall,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12098 OF 2016

Kalindabai W/o. Rajendra Tribhuvan,
Age. 38 years, Occ. Nil,
R/o. Nagsen Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12099 OF 2016

Anitabai W/o. Gauttam Dabhade,
Age. 40 years, Occ. Nil,
R/o. Ambedkar Nagar, Galli No. 06,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12122 OF 2016

Laxmibai W/o. Bhaskar Sasane,
Age. 30 years, Occ. Nil,
R/o. Kabir Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12123 OF 2016

Kasturbabai W/o. Annu Alkunte,
Age. 52 years, Occ. Nil,
R/o. Jaybhim Nagar, Pragati Colony,
Town Hall, Aurangabad,
Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12124 OF 2016

Chandrakalabai W/o. Bhagwan Hiwrale,
Age. 45 years, Occ. Nil,
R/o. Kachiwada, Jadhavmandi,
N-7, CIDCO, Aurangabad,
Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12125 OF 2016

Bhagwan S/o. Sampatrao Ugale,
Age. 35 years, Occ. Nil,
R/o. Jaybhim Nagar, Town Hall,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12126 OF 2016

Bharat S/o. Devidas Kale,
Age. 32 years, Occ. Nil,
R/o. Yekata Nagar, Harsul,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12127 OF 2016

Sunita W/o. Gauttam Bhivsane,
Age. 38 years, Occ. Nil,
R/o. Gulabnagar, Town Hall,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12128 OF 2016

Nandu S/o. Sundarlal Sable,
Age. 35 years, Occ. Nil,
R/o. Begumpura, Ghati,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12129 OF 2016

Sagar S/o. Tukaram Navkar,
Age. 32 years, Occ. Nil,
R/o. Kabeer Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12130 OF 2016

Balu S/o. Sahebrao Ujgare,
Age. 30 years, Occ. Nil,
R/o. Nagsen Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12131 OF 2016

Bhartabai W/o. Vijay Bhalerao,
Age. 37 years, Occ. Nil,
R/o. Near Bhadkal Gate,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12132 OF 2016

Ushabai W/o. Subhash Dabhade,
Age. 40 years, Occ. Nil,
R/o. Jaibhim Nagar, Town Hall,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12133 OF 2016

Anita W/o. Bhagwan Ugale,
Age. 37 years, Occ. Nil,
R/o. Near Dr. Babasaheb Ambedkar Garden,
Gulabwadi, Jaybhim Nagar,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12134 OF 2016

Nandabai W/o. Prakash Phule,
Age. 40 years, Occ. Nil,
R/o. Kabir Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12135 OF 2016

Suresh S/o. Sheshrao Sable,
Age. 29 years, Occ. Nil,
R/o. Padegaon, Aurangabad,
Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12136 OF 2016

Kailash S/o. Uttamrao Hiwrale,
Age. 28 years, Occ. Nil,
R/o. Jaybhim Nagar, Town Hall,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12137 OF 2016

Jyotibai W/o. Bharat Bhivsane,
Age. 32 years, Occ. Nil,
R/o. Jaibhim Nagar, Town Hall,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12138 OF 2016

Kantabai W/o. Ashok Gangawane,
Age. 40 years, Occ. Nil,
R/o. Jaibhim Nagar, Town Hall,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12139 OF 2016

Amol S/o. Dhuraji Suryanarayan,
Age. 28 years, Occ. Nil,
R/o. Jaybhim Nagar, Town Hall,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12140 OF 2016

Rekhabai W/o. Raosaheb Hiwale,
Age. 38 years, Occ. Nil,
R/o. Jaibhim Nagar, Town Hall,
Aurangabad, Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

WITH
WRIT PETITION NO. 12141 OF 2016

Vijaya W/o. Kailash Sadaphule,
Age. 40 years, Occ. Nil,
R/o. Satara Parisar, Satara,
Aurangabad, Tq. & Dist. Aurangabad.

...PETITIONER

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENT

...
Advocate for Petitioners : Shri Rajesh K. Khandelwal
Advocate for Respondent : Shri Sambhaji S. Tope
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 20, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petitions are taken up for final disposal.
4. In all these petitions, the petitioners claim to be Safai Kamgar with the respondent / Corporation. All of them have claimed to have worked for about two years prior to their oral termination on the dates stated in the order of Reference passed by the Deputy Commissioner of Labour, Aurangabad, by which, the Industrial Disputes were referred to the labour Court. All of them are aggrieved by the impugned orders, dated 23.8.2011 and 4.2.2013, by which, all the Reference Cases were dismissed for non-prosecution.
5. Applications for restoration of the Reference cases were filed in 2016 and by the impugned orders dated 19.5.2016, all the Misc.

Applications were rejected. Such rejection was challenged before this Court in Writ Petition Nos. 8476 and 8486 to 8490 of 2016. By the judgment dated 10.8.2016, this Court dismissed the petitions for the reason that the restoration applications which were filed after a delay of about 460 to 1100 days were untenable, considering the law laid down by this Court in Dnyaneshwar Anantrao Kulkarni Vs. The Superintendent Engineer, PWD and others [2015 III CLR 81], by placing reliance upon the law laid down by the Honourable Supreme Court in the matter of Sangham Tape Company Vs. Hansraj [(2005) 8 SCC 331]. Liberty was, therefore, granted to these petitioners to challenge the orders dated 23.8.2016. It is in this backdrop that these petitions have been filed in this Court.

6. Shri Tope, learned Advocate appearing on behalf of the Corporation in all these cases submits that these petitions suffer the from inordinate delay, none of these petitioners can be said to have worked continuously with the Corporation, much less completed 240 days in any given calendar year, none of them were inducted in employment of the Corporation, none of them were issued with appointment orders and as such, even on the merits of the matter no purpose would be served in restoring the reference cases to the Labour Court.

7. I have considered the submissions of the learned Advocate.

8. The law is well settled that a Reference made to the Labour Court or the Tribunal is not to be dismissed in default. Once a reference has been made by the order of the competent authority under Section 12(4) read with Section 10(1) and Section 12(5) of the Industrial Disputes Act, the Labour Court or the Tribunal as the case may be, is under a legal obligation to decide the reference cases. Even if the second party workman does not file its statement of claim, the Labour Court / Tribunal is expected to deliver its award on the material available and the reference could then be answered in the negative.

9. The learned Single Judge of the Karnataka High Court in the matter of T.S.Zingade Vs. Karnataka State Road Transport Corporation [1979 (38) FLR 202], has held that the term 'Award' used in Section 15 of the Industrial Disputes Act means a decision on the merits of the question / terms of reference addressed to the Court. In my view, once a reference has been made to the Tribunal / Court, the reference has to be answered. Section 2(b) indicates that a decision delivered by the Court would constitute an Award. There must be a determination on the terms of reference and questions addressed / referred to the Court. In the absence of a statement of claim, the Labour Court could very well scan the available record and decide the reference.

10. In the matter of Yadvinder Sharma Vs. State of H.P. and others - Civil Writ Petition NO.683 of 2011, dated 28.11.2011 (High Court of Himachal Pradesh), it has also been held that a reference case cannot be dismissed in default. The learned Division Bench of the Himachal Pradesh High Court has held in paragraph Nos.3 to 6 as under:-

"3. Section 16 provides that the Award of the Labour court or Tribunal shall be in writing. Under Section 17, the same has to be published and within 30 days of publication, the Award becomes enforceable, as provided under Section 17-A. Section 2(b) defines an Award as follows:

"(b) 'Award' means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10-A."

Section 2(k) defines Industrial dispute, which reads as follows:

"(k) 'industrial dispute' means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

4. *Settlement of industrial dispute being the main object behind the Industrial Disputes Act, 1947, the provisions as extracted above would show that once an industrial dispute which could not be settled in conciliation, the same is referred to the Labour Court or the Industrial Tribunal, as the case may be, for adjudication. The purpose of adjudication is determination of the industrial dispute and the same is expressed in the form of an Award. Therefore, once a Reference under Section 10 of the Industrial Disputes Act is made to the Labour court or the Industrial Tribunal, the said forum is to determine the dispute or question referred to it by appropriate adjudication. The Government along with the Reference also forwards the relevant materials also to the Court or the Tribunal. Thus, once a Reference is made, the Court or the Tribunal has to decide the same on the basis of the materials available on record. Whether any party to the dispute cooperates or not is immaterial. Hence, there arises no question of dismissal of the Reference for default. The Reference can be disposed of only by passing an Award whereby the question referred to it has been determined by the Labour Court or the Tribunal by passing an Award. The Presiding Officer, on the basis of the materials available on record should consider the matter on merits and enter the findings.*

5. *Under Section 18 of the Land Acquisition Act also, the Collector makes a Reference to the Civil Court in the matter of fixation of compensation. In that process also the available materials are made available to the Civil Court. The Reference Court is bound to consider the matter referred to it and take a decision as to the just and proper compensation. The Court cannot dismiss the same for default. This principle*

has been settled by the Supreme Court in **Khazan Singh (dead) by L.Rs vs. Union of India** reported in AIR 2002 SC 726, wherein it has been held as follows:

“ The reference made by a Collector under S. 18 of the Land Acquisition Act, 1894 cannot be dismissed for default. The provisions of Ss. 18, 20, 26 make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under S. 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default.”

6. A Division Bench of the Punjab and Haryana High Court had occasion to consider the question as to whether the Labour Court is free to dismiss a Reference for non-prosecution by the decision in **K.K. Rattan vs. Presiding Officer, Labour Court and others**, reported in High Court, Punjab and Haryana 378. It has been held that the Labour Court has no power to dismiss a Reference for non-prosecution. It is bound to adjudicate on merits even if the workman is absent. To quote:

“ When a dispute is referred to the Tribunal, it has to decide it on merits. There is no power conferred on it to dismiss a reference for non-prosecution. It is the duty of the Labour Court to consider the claim statement of the workman and the written statement

of the management and any other record before it and answer the point referred to it on merits.”

11. This Court (Coram : Smt. Nishita Mhatre, J.), in the matter of Rajman Shrikrishna Morya Vs. Marshal Security Pvt. Ltd. - Writ Petition No. 8682 of 2009, dated 6.9.2010, has concluded that an order of dismissing a reference in default is not an award and as such, the same would be unsustainable since a reference has to be answered either way, whether the litigating sides participate in the proceedings or not.

12. I find that the submissions of Shri Tope on the ground of delay needs to be accepted to a limited extent. The Industrial Disputes Act does not prescribe any limitation for raising an Industrial Dispute, be it under Section 2(k) or Section 2A. So also, after the reference cases were dismissed for non-prosecution on 23.8.2011 and 4.2.2013, the restoration applications were filed belatedly in 2014. Thereafter, the petitioners were before this Court in 2016 as noted above. In this backdrop, considering the negligence on the part of the petitioners, they need to be deprived of the monetary benefits, if at all, they succeed in their reference cases.

13. In the light of the above, these petitions are partly allowed. The impugned orders dated 23.8.2011 and 4.2.2013 in Reference IDA

Nos. 422, 410, 405, 404, 417, 418, 415, 403, 427, 420, 406, 210, 203, 259, 269, 249, 213, 214, 209, 208, 205, 264, 215 and 263 all of 2010 are quashed and set aside and all these reference cases are restored to the file of the 1st Labour Court at Aurangabad. The litigating sides shall appear before the said Court on 10.1.2016 and formal notices need not be issued by the Court.

14. These petitioners shall file their statements of claim in all these matters on/or before the 21.1.2017. Upon receipt of the same, the respondent / Corporation shall file its written statements on/or before 24.2.2017. The Labour Court shall decide these reference cases on their own merits. In the event, these petitioners succeed in the reference cases, they shall be deprived of all monetary benefits from the date of registration of their reference cases before the Labour Court till December, 2016 for the lapses on their part due to which the reference cases were dismissed earlier.

15. The Labour Court shall also keep in view the law laid down by the Honourable Supreme Court in the following four cases, if at all, compensation is to be quantified, considering the purported short span of employment followed by a long period of unemployment:-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],

3. BSNL Vs. Man Singh [(2012) 1 SCC 558] and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].

16. It be noted that the above observations of this Court are purely on the basis of law and would not mean that this Court is convinced about the merits of the claims of the petitioners. Needless to state, the Labour Court shall decide the reference cases on their own merits.

17. Rule is made partly absolute in above terms, in all these petitions.

(RAVINDRA V. GHUGE, J.)

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akl/d