

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3798 OF 2016

SATPUDA TAPI PARISAR SAHAKARI SAKHAR KARKHANA LTD.
VERSUS
SUBHASH SAKHARAM CHAUDHARY

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Advocate for Petitioner : Shri Barde Parag Vijay

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 04, 2016
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PER COURT :-

1. The petitioner is aggrieved by the order dated 3.11.2015, delivered by the Labour Court, Dhule, by which the application Exhibit U/17 seeking production of documents in Application (IDA) No.2 of 2010 has been allowed.
2. Shri Barde, learned Advocate for the petitioner has strenuously criticized the impugned order.
3. Contention is that the respondent / employee, who has already superannuated from service has raised an issue of recovery of amounts due from an employer for the period 1997-1998 upto 1.5.2009 when the respondent retired from service. Disputed issues have been raised by the respondent / employee in an application which has been filed on 29.4.2010 after his superannuation. Considering the disputed claims made, the jurisdiction of the Labour Court could not be invoked under Section 33C(2)

of the Industrial Disputes Act, 1947 (“ID Act”) since that jurisdiction can be invoked only on the basis of a preexisting right.

4. He further submits that a detailed written statement was filed. Objection was set out with regard to the tenability of the application. A separate application raising preliminary objections was filed on 13.3.2013 after filing the written statement on 25.9.2012.

5. Grievance is that the Labour Court, without deciding the issue of jurisdiction, has proceeded to entertain the application for production of documents by order dated 3.11.2015.

6. It is further contended that Article 7 of the Limitation Act imposes a limitation of three years on such a claim and as such, the Labour Court would be precluded from exercising its jurisdiction.

7. It is further stated that some documents have been produced by the petitioner. Those documents could be germane to the cause of action notwithstanding the objections raised. Yet the Labour Court has passed the impugned order directing the petitioner to produce registers and state the arrears to be paid. This amounts to a roving enquiry which cannot be permitted.

8. I have considered the submissions of the learned Advocate for the

petitioner as recorded herein above.

9. The direction issued by the Labour Court in the impugned order is reproduced as under:-

“(1) Application is allowed.

(2) Opponent is directed to produce the following information on record forthwith.

(a) How much amount is paid to the applicant towards salary since 1997 till 2009 after deducting the necessary advance.

(b) How much amount is in arrears by the applicant from opponent since 1997 till 2009 towards salary or any other allowances.

(3) Costs in cause.”

10. The respondent has put forth certain claims with regard to short fall in payment of wages, payment of paltry sums as advances without making the full payment of wages, non payment of legal dues on the date of retirement, gratuity not being paid, pension and provident fund not being made available etc.

11. It is trite law that non-payment of wages or part of wages would be a recurring cause of action. Such outstanding wages should have been

cleared at the time of relieving the respondent from employment on retirement. Moreover, the respondent has invoked the jurisdiction of the Labour Court under Section 33C(2) which does not prescribe any limitation, in contra distinction to Section 33C(1) which prescribes a limitation of one year. The said issue of there being no limitation under Section 33C(2) in the light of the objection of the petitioner can surely be considered by the Labour Court while deciding the main application.

12. The issue before the Labour Court while deciding application Exhibit U/17 was with regard to the claim of the petitioner that he was paid certain advances against monthly wages and therefore, the residual amounts have to be recovered. The petitioner, therefore, has to indicate the payment of wages in order to dispute the claim of the respondent on the basis of its records. Payment of wages or advances in lieu of wages is a matter of record and cannot be decided on oral statements.

13. In so far as the objection of the petitioner that since the Bombay Industrial Relations Act is applicable, the provisions of the ID Act would not be applicable is concerned, I do not find any merit in the same, though the said issue can also be dealt with finally at the time of deciding the main application for recovery of money. I do not find any reason to direct the Labour Court to frame any preliminary issue in the light of the view of the Honourable Supreme Court in the matter of D.P. Maheshwari Vs. Delhi Administration and others [AIR 1984 SC 153] and Cooper Engineering Versus

P.P.Mundhe [AIR 1975 SC 1900 = 1976 SCR (1) 361].

14. Considering the above, I do not find that the impugned order delivered by the Labour Court dated 3.11.2015 could be termed as being perverse or erroneous or likely to cause grave injustice to the petitioner.

15. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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