

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1414 OF 2013

Mr. A.A. Bandarkar and ors.

.... Petitioners

vs

The State of Maharashtra, through
Secretary, Co-op. Dept., and ors.

.... Respondents

Mr. V. P. Vaidya for the petitioners.

Mr. V. N. Sagare, AGP for respondents 1 to 4.

Mr. Shailesh Chavan i/by Mr. Milind Deshmukh for respondent No.5.

**CORAM: ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.****DATE : September 06, 2016****ORAL JUDGMENT (Per G. S. Kulkarni J.):**

The Petitioners claim to be retired employees of Respondent No. 5 – The Maharashtra State Cooperative Krushi & Gramin Bahudeshiya Vikas Bank, Mumbai, which the Petitioners state was split up into 26 Banks. Ultimately in the year 2001, the Petitioners became the employees of Respondent No. 6 - Sindhudurg Zilla Sahakari Krushi & Gramin Bahudeshiya Vikas Bank, Sindhudurg. The Petitioners are claiming reliefs in respect of Settlement dated

27.10.1996 arrived between Respondent No. 5 and its employees, through the trade Union, namely “The Rajya Sahakari Krushi and Gramin Vikas Bank Karmachari Sanghatana, Maharashtra”. It is the case of the Petitioners that the benefits are entailed to the employees under the said Settlement to the extent of payment of arrears of additional Index Dearness Allowance along with interest, which is not paid to the Petitioners as on the settlement. Admittedly, the settlement in question, relates to a period much prior to the splitting of Respondent No.5 and the transfer of the services of the petitioners to Respondent No. 6 which had taken place on 1.10.2001. The Petitioners, on this background, have approached this Court for the following reliefs :

(a) Direct the Respondents to implement the Agreement dated 27.10.1996, read with office Order dated 6.11.1996 to the extent of payments of arrears of additional index dearness allowances to the Petitioners employees in terms of clause 3(b) of the said office Order and direct the Respondent Nos. 5 and 6 to disburse the said arrears pertaining to the period 1.2.1998 till the date of retirement of each Petitioner towards arrears of additional index dearness allowance along with interest, in the interest of justice and as stated in Exhibit “A” hereto.

(b) Direct the Respondents to grant consequent benefits to the Petitioners and pay to the Petitioners the corresponding and additional amount payable to the

Petitioners on the basis of the last pay drawn by the Petitioners including the amount of additional index dearness allowance and then pay to the Petitioners the difference of the amount of gratuity, provident fund, leave encashment etc along with interest, as per the details given in Exhibit "A" hereto."

2 The learned counsel appearing for the Petitioners has pointed out that in regard to the very issue as raised in the petition, the representative Union had taken up the cause and there were proceedings which were filed before the Aurangabad Bench of this Court as also the Nagpur Bench of this Court. It is not in dispute that the orders which are passed in those proceedings entail to the benefit of the Petitioners. The learned counsel for the Petitioners has also drawn our attention to a recent Government Resolution dated 24 July 2015 which interalia records certain decisions which are taken by the State Government in respect of the liabilities of erstwhile Respondent No.5 – Bank and Respondent No. 6. The State Government in clauses 3 and 4 of this Resolution has notified that it is not possible for Respondent No.6-Bank to make payments because of its bad financial condition as also to make payments which are due to the employees. It also sets out a scheme/method by which such payments could be

made to the persons as also employees.

3 A perusal of the averments as made in the Petition and the prayers which we have noted above per se indicate that these reliefs cannot be granted in a writ petition. The prayer is for enforcement of settlement dated 27.10.1996 and for making payments of the dues under the said settlement. We do not find any document/letter/representation of the Petitioners making any claim under this settlement at any point of time. It is also not a case that the Petitioner made a demand to Respondent No.5 before their services were transferred in 2001 to Respondent No.6. The Petitioners appear to have approached this Court only after they became aware of order dated 15.03.2012 passed by the Nagpur Bench of this Court in Writ Petition No. 4169/2009 – (Ramesh W. Wasu v. The State of Maharashtra and ors.).

4 Also the fact remains, that, if the representative/Union has espoused the cause of the Petitioners, then why the Petitioners should file an independent Petition. The answer of the learned counsel for the Petitioners on this count is that the Union is no more taking any

action so that the Petitioners can receive their dues. We do not agree and in our opinion, surely this cannot be a reason to entertain this Petition.

5 We have noticed that various orders are passed by the different Benches of this Court. The Petitioners are claiming support under these orders and concede that the Petitioners would stand benefited by these orders. If this be the position, then surely this writ petition ought not to have been filed by the Petitioners. In fact, in one of the orders which is passed by the Nagpur Bench of this Court in Writ Petition No. 1855/2011 dated 16.01.2012 (Nagpur Bench), taking note of an order of the Division Bench of this Court, the Court has observed thus:

“In this situation, the entitlement of the petitioners as disclosed in para 11 of the petition to respective amounts is accepted by this Court as it is, being not disputed by any of the respondents. The petitioners are permitted to execute the orders of this Court against Respondents No. 1 & 2 and recover the amounts due to them in accordance with law.”

6 The learned counsel appearing for the Petitioners at this stage has tendered across the bar an order dated 4.8.2015 passed by

the learned Single Judge at the Aurangabad Bench, in Writ Petition No.344/2010 along with other matters which also takes into consideration the various orders which are passed earlier.

7 It appears that certain amounts are due to the Petitioners under the Settlement. The Petitioners have retired. The settlement is dated 27.10.1996 much prior to their retirement. No proceedings under the applicable labour laws were initiated by the Petitioners to demand such amounts for almost 17 years and the Petitioners have directly approached this Court seeking enforcement of a settlement which was entered with the erstwhile Respondent No.5. In this situation, we are unable to help the Petitioners to issue a writ as prayed for and more particularly when the Petitioners never espoused any grievance in that regard till they retired from the services of Respondent No. 6. However, as noted above, if certain orders passed by the Division Bench of this Court at Aurangabad and Nagpur or Government Resolution dated 24 July 2015, are entailing to the benefit of the Petitioners, it would not deprive the Petitioners to seek benefit of such orders from the appropriate authorities in respect of the settlement in question, the Petitioners would be at liberty to

approach the authorities if so permissible in law. If the Petitioners make any such application, to the appropriate Authority, the Authority may consider such Application and decide the same in accordance with law as expeditiously as possible.

8 In view of the above observation, we are not inclined to entertain this writ petition. We accordingly dismiss the writ petition, however, subject to above observations.

9 No costs.

The parties to act on the basis of an authenticated copy of this order.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)