

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.740 OF 2014
IN
WRIT PETITION NO.9601 OF 2009**

Mr.Hemant Shyamrao Sankpal ..Applicant

IN THE MATTER BETWEEN

Union of India ..Respondent
(Org.Petitioner)

V/s.

Mr.Hemant Shyamrao Sankpal ..Respondent

**WITH
CIVIL APPLICATION NO.739 OF 2014
IN
WRIT PETITION NO.9600 OF 2009**

Mr.Ravindra Shankarrao Talekar ..Applicant

IN THE MATTER BETWEEN

Union of India & Anr. ..Respondents
(Org.Petitioners)

V/s.

Mr.Ravindra Shankarrao Talekar ..Respondent

Mr. Milan Topkar for the Petitioner in both Petition.

Mr.R.V. Govilkar a/w Mr.N.R. Prajapati for Respondent No.1 in both Petition.

CORAM : S.C. GUPTE, J.

DATE : 03rd AUGUST 2016.

P.C.

1. These Civil Applications have been taken out by the

applicants (Original Respondents in the two Writ Petitions), under Section 17B of the Industrial Disputes Act, 1947, seeking directions for payment of full wages last drawn by them, during the pendency of the petitions.

2. The applicants were employed by the respondents as Postmen for over seven years since November 1994. Their services were terminated by the respondents with effect from 09th September 2001. Both the applicants raised disputes concerning their terminations. The disputes were referred to the Labour Court at Kolhapur being Reference (IDA) Nos.18 of 2003 and 19 of 2003. By awards dated 06th March 2009, the Labour Court allowed both references and held the applicants' terminations to be illegal and directed the respondents to re-instate the applicants with continuity of service and back-wages. The respondents have challenged these awards by these two Writ Petitions. Both the petitions were admitted on 27th January 2010 and the operation of the awards was stayed. Both applicants thereafter filed Civil Applications under Section 17B of the Industrial Disputes Act for payment of wages during the pendency of the Writ Petitions. This Court, vide orders dated 05th October 2010, allowed the Civil Applications and directed the respondents to pay wages under Section 17B of the Industrial

Disputes Act to the applicants regularly every month and also pay arrears of such wages within 12 weeks. The respondents challenged the orders under Section 17B in Letters Patent appeals, which were dismissed by a Division Bench of this Court by its order dated 06th April 2011. In response to the applicants' letters to the respondents to at least now proceed with the payment of Section 17B wages, the respondents first took a stand (letter dated 06th June 2011) that copy of the order (Order dated 06th April 2011) was not received by them and that as soon as they receive such copy, they shall forward the same to the concerned Post Master General. Subsequently, sanction letters were issued by Senior Superintendent of Post Office for payment of wages to the applicants in accordance with the order passed by this Court on 06th April 2011. The sanction letters show the last drawn salary of the applicants as Rs.1,309/- and accordingly, direct wages to be paid to the applicants in pursuance of the order of 06th April 2011. It is the grievance of the applicants that their last drawn salary was Rs.140/- per day, aggregating to about Rs.4,200/- per month. In the premises, the applicants have preferred the present Civil Applications, seeking payment of an amount of Rs.4,200/- per month as full wages last drawn with retrospective effect from 27th January 2010 together with all arrears upto date.

3. The applications are opposed by the respondents. In their reply to the applications, the respondents contend that the applicants last worked in the department from 01st September 2001 to 09th September 2001 and that the last paid remuneration to the applicants was of Rs.1,309/- for this period. It is submitted that this remuneration is the last pay drawn and that, accordingly, wages are payable under Section 17B at the rate of Rs.1,309/- per month.

4. The submission of the respondents, to say the least, is preposterous. In the first place, this Court has required the respondents to pay the last drawn wages of the applicants per month. The applicants having been terminated on 09th September 2001, they worked only for nine days in the month of September 2001 and accordingly, were paid a sum of Rs.1,309/- in keeping with their daily rate of wages, namely, Rs.140/- per day. Accordingly, the last drawn salary per month of the applicants can never be pegged at Rs.1,309/-. This amount reflected wages calculated at the rate of Rs.140/- per day for a period of nine days and the monthly wages, in accordance with even this calculation, work out to Rs.4,200/- per month (@ Rs.140/- per day).

5. Mr.Govilkar, learned counsel for the respondents,

submits that the applicants were not appointed as regular postmen but were on leave vacancies on the basis of leaves of different workmen of the respondents. The contention, in the first place, is on merits of the case urged in the petition. In fact, the issue as to whether the applicants were employed on leave vacancies or as regular workmen was placed before this Court, when this Court passed its order on 05th October 2010. This Court, particularly, noted that this issue was yet to be decided in the Writ Petitions and that the contention had no merit in so far as Section 17B was concerned.

6. In the face of these observations, it does not lie in the mouth of the respondents to oppose payment of full last drawn wages on the basis of the order passed by this Court on 05th October 2010.

7. Ordinarily, in these facts, I would have been inclined to allow the applications with substantial costs to be paid by the respondents, such costs to be recovered from the Senior Superintendent of Post Office of Kolhapur, who is responsible for payment of wages to these applicants and who has filed an affidavit in reply taking this specious plea. Mr.Govilkar, however, points out

that the Senior Superintendent of Post office, who took the decision on 13th July 2011 in this behalf, is no longer with the respondents and that the present Senior Superintendent has simply followed that decision. Considering this fact, I am not imposing any cost on the officer concerned.

8. The Civil Applications are, accordingly, allowed. The respondents shall pay the entire amount of arrears of wages in terms of the orders of this Court dated 05th October 2010 calculated at the rate of Rs.4,200/- per month with effect from 27th January 2010 till date within a period of four weeks from today. The respondents shall continue to pay every month without fail a sum of Rs.4,200/- per month to each of the applicants regularly, in accordance with the order dated 05th October 2010.

9. The applications are disposed of accordingly. All parties to act on the authenticated copy of this order.

(S.C. GUPTE, J.)