

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3728 OF 2016**

Pandita Ramabai Mukti Mission	)	
A NGO registered under the	)	
Bombay Public Trust Act, 1950	)	
having its office at	)	
P. O. Kedgaon 412 203	)	
District Pune	)	
through its Authorised Representative	)	..Petitioner

Vs.

**1 Maharashtra Labour Union)
Kamgar Bhavan, 629 Kakade Arcade)
Ratan Theatre Building Budhwar Peth)
Pune)**

2 The Addl. Commissioner)
Pune Region, Mumbai Pune Road,)
Bungalow No.5, Shivaji Nagar,)
Pune 411 005) ..Respondents

Mr. A. P. Wachasunder for the Petitioner
Mr. S. V. Abhang a/w Mr. Aashish Satpute i/b Lex Credence for the
Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 17th OCTOBER, 2016

P.C.

1 Rule. With the consent of the Learned Counsel for the parties
made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the Award
dated 31-7-2015 passed by the Learned Presiding Officer, Industrial Tribunal

Pune by which Award, the Reference in question has been answered to the extent mentioned in the said Award.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Reference in question arose out of the dispute between the Petitioner and the Respondent No.1 herein pertaining to the general demands relating to wage rise, annual increment, dearness allowance and other benefits which were claimed in terms of the Annexure A to the schedule of the Reference order. Pursuant to the said Reference being made, a statement of claim came to be filed by the Respondent No.1 herein on 28-9-2010. In the said statement of claim, the demands made are inter alia as follows:

- (a) That the statement should be for a period of 3 years i.e. from 1-1-2008 to 31-12-2010.
- (b) That the workmen who have worked for more than 90 days should be made permanent.
- (c) Increment was sought in terms of the table mentioned therein.
- (d) Increase of Rs.1000/- per month should be made in the basic wages of the workmen since there has been no increase in the wages for mentioned years.
- (e) Special allowance under the Minimum Wages Act should be given and besides the special allowance, allowance of Rs.1000/- be given in the fixed dearness allowance.

(f) All the workmen should be paid Rs.500/- as house rent allowance and in the Daund, Kedgaon house rent allowance is Rs.1000/-. Hence the demand is reasonable. All the workmen should be paid Rs.1000/- as educational allowance, Rs. 500/- as washing allowance. Each of the workmen should be paid Rs.500 as conveyance allowance as the workmen are required to transfer for 25 to 30 km to attend the office.

(g) The workmen should be given 12 days casual leave with facility to encash the casual leave which are not availed of. The workmen who are covered by ESIC scheme should be allowed 10 days sick leave and other should be permitted to avail of 15 days sick leave. All the workmen should be given 20 days P. L. for every 240 days of services.

(h) Provident Fund contribution made by the Company should be @ 12%.

(i) Gratuity should be paid @ 30 days for each year of services.

(j) Over time allowance should be paid double the wages.

(k) Each workmen should be given festival advance of Rs.2000/- twice a year and emergency loan @ Rs,1500/-

(l) The school going children of the workmen should be provided with books, school uniform and pair of shoes in the month of May of each year.

(m) There should be death benevolent fund in case of death of workman.

(n) Bonus to be paid @ 20% minimum and also 5% exgratia.

(o) For amicable industrial relation the cultural programmes should be arranged.

(p) The Union should have right of representation. The workmen should be provided two pair of gum shoes and uniform, which inter alia are the demands.

4 The Petitioner herein opposed the reference inter alia on the ground that the Respondent Union who is the second party does not represent any of its workman and therefore has no locus standi and secondly on the ground that the Petitioner who is the first party is not an industry within the meaning of the Industrial Disputes Act. It was the case of the Petitioner that it is mainly involved in social and charitable work and it caters to the rehabilitation of destitute women / children. It was also its case that the objects of the trust have been elaborately mentioned. It was its case that there is no activity of commercial nature or involving trade or business. The parties led oral and documentary evidence in support of their respective assertions, by examining two witnesses each.

5 The Learned Presiding Officer of the Industrial Tribunal Pune has as indicated above by the impugned Award dated 31-7-2015 has answered the Reference and has granted the benefits to the extent mentioned in the Award. As indicated above it is the said Award dated 31-7-2015 which is taken exception to by way of the above Petition.

6 Heard the Learned Counsel for the parties.

7 The principal contention urged by Mr. Wachasunder the Learned
Counsel appearing for the Petitioner is that the Award in question is sans any
reasons in respect of the demands which have been granted out of the charter
of demands. It was the submission of the Learned Counsel that the well
settled principles applicable for adjudication of a reference involving a charter
of demands have not been followed by the Learned Presiding Officer of the
Industrial Tribunal Pune. It was the submission of Mr. Wachasunder that the
adjudication of the Reference ought to have been on the touchstone as to the
financial capacity of the Petitioner to bear the burden initially and thereafter
continue to bear the burden which would arise on account of the acceptance of
the demands. The Learned Counsel would contend that some of the demands
as can be seen from the impugned Award have been granted without there
being any reason for allowing the same. The Petitioner has annexed Exhibit U
to the above Petition which is a table or a statement as regards how each of
the demands have been considered by the Learned Presiding Officer of the
Industrial Tribunal Pune. The Learned Counsel drew this courts attention to
the said table to buttress his contention as regards the Award being sans any
reasons.

8 Per contra the Learned Counsel Mr. Abhang appearing for the

Respondent No.1 would support the impugned Award. It was the submission of the Learned Counsel that the demands which have been accepted are on the basis that the similar benefits are being granted to the other workman. It was the submission of the Learned Counsel that the financial capacity of the Petitioner has been considered by the Learned Presiding Officer of the Industrial Tribunal Pune. The Learned Counsel sought to draw this courts attention to the findings recorded in the impugned Award in support of his said statement.

9 Having heard the Learned Counsel for the parties I have considered the rival contentions. In so far as the adjudication of a Reference involving a charter demands is concerned, the relevant considerations that ought to weigh with the Industrial Tribunal which is ceased with such adjudication, are well settled by a catena of judgments of the Apex Court. The said adjudication has to be on the basis of the industry-cum-region principle or having regard to the comparable concern or institution if the industry-cum-region principle is not applicable. The financial wherewithal of the employer is also one of the relevant consideration which ought to weigh with the Industrial Tribunal. Apart from the fact whether the employer has the capacity to bear the burden at the inception, the consideration has also as to be whether the employer can continue to bear the financial burden on account of the acceptance of the demands. In the instant case, unfortunately the matter

has not been addressed from the said angle. The impugned Award discloses that no specific findings have been recorded as regards the financial capacity of the Petitioner to bear the burden which would arise on account of the acceptance of the demands. The Learned Presiding Officer of the Industrial Tribunal Pune has also not adjudicated the Reference by comparing the demands made with the pay package if any of similar or comparable institutions. The impugned Award discloses that the said demands have been accepted and there are absolutely no reasons mentioned as to why a particular demand is accepted or rejected. The Learned Presiding Officer has also granted certain benefits when it is actually open for the employees to move the concerned authorities under the concerned legislations if the said benefits are denied to them.

10 In my view therefore, the adjudication of the instant Reference has not been done in a satisfactory manner which in fact has caused prejudice to both the sides. In that view of the matter, the impugned Award dated 31-7-2015 is required to be quashed and set aside and is accordingly quashed and set aside and the matter is relegated back to the concerned Industrial Tribunal for re-adjudication of the Reference. On remand the parties are at liberty to file additional pleadings as also lead additional evidence if so advised. The Learned Presiding Officer of the concerned Industrial Tribunal would accordingly permit the parties to do so. Needless to state that the Reference in

question would be tried on its own merits and in accordance with law and the fact that the Award has been set aside by the instant order would not be construed as any expression of opinion on the merits of the case of either of the parties. The Reference on remand to be decided latest by 30-9-2017.

11 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]