

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.663 OF 2000

Sarva Shramik Sangh,
"Shramik" Tilak Road,
Ahmednagar.
Through its Secretary.

...PETITIONER

-VERSUS-

- 1 Saint Martin Hospital,
A/p. Kolhar (Bk.),
Tq.Shrirampur, District Ahmednagar.
Through its Managing Trustee.
- 2 Member, Industrial Court,
Ahmednagar.
(Deleted vide order dated 30.06.2002).

...RESPONDENTS

...
Shri A.S.Shelke, Advocate for the Petitioner.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th May, 2017

Oral Judgment :

- 1 The Petitioner Union representing nine employees mentioned in Annexure-A to the petition, is aggrieved by the judgment of the Industrial Court dated 30.09.1999 by which Complaint (ULP) No.379/1989 though has been allowed, monetary benefits till the date of

the impugned judgment were not granted.

2 This Court admitted this petition on 03.06.2002 and refused interim relief to the Petitioner. Despite service of court notice, none appears for the Respondent.

3 I have heard the strenuous submissions of the learned counsel for the Petitioner, who contends that as formal closure of the Respondent Hospital was not declared, 09 employees would be entitled for continued wages as under the Industrial Disputes Act, 1947, a formal closure alone would sever the employee-employer relationship between the Petitioner and the Respondent.

4 It is trite law that the Establishment/ Industry has to declare a formal closure which would result in the discharge of the employees. Such employees would then be entitled for legal dues including discharge compensation which is equivalent to retrenchment compensation.

5 However, I find that the Industrial Court by the interim order dated 27.11.1989 had directed the Respondent/ Establishment to pay all arrears of salaries to the employees at issue from September, 1989 onwards. It was further directed that the Respondent/ Establishment

would pay salaries to all employees as long as they are in employment in future. The Respondent was given the liberty to terminate the services of the employees by following the due procedure of law.

6 The learned counsel for the employees submits that the interim order of the Industrial Court dated 27.11.1989 was implemented only to the extent of payment of arrears of salaries. However, salaries after the date of the interim order till the date of the impugned judgment were not paid.

7 The Industrial Court, while dealing with the complaint finally, has noted that evidence was adduced on behalf of the workers that the last working day of these workers with the Respondent/ Establishment was 04.12.1990. The Industrial Court also noted from the oral and documentary evidence that no doctor was appointed in the Respondent Hospital and except the watchman, who was guarding the property, nobody was visiting the hospital. Though these employees have stated in oral evidence that they were not terminated, it was proved that the last working day of these workers was 04.12.1990 and they were paid salaries less than minimum wages as were prescribed at the relevant time. Based on such evidence, the Industrial Court concluded that since the entire activities of the hospital were stopped by 04.12.1990, the said date could

be presumed to be the discharge date of these workers and closure of the Establishment. Since closure compensation and wages from November, 1989 to November, 1990 were not paid, the Industrial Court directed the Respondent/ Establishment to pay closure compensation which is akin to the calculations of retrenchment compensation as well as unpaid wages and all retiral benefits.

8 It is not disputed that after 04.12.1990, the hospital has become completely dysfunctional.

9 Considering the peculiar facts as recorded above and the statement made by the witness of the workers that the last working day was 04.12.1990, I do not find any reason to conclude that the impugned judgment is perverse or erroneous merely because a different or second view is possible in the matter.

10 This Writ Petition is, therefore, dismissed. Rule is discharged.

11 However, it is observed that the Respondent/ Establishment shall accordingly, calculate entire closure compensation, unpaid wages, difference of minimum wages and all retiral dues including gratuity payable to these workers and pay the same within a period of EIGHT

WEEKS from today, failing which the said amount would carry interest at the rate of 6% per annum from the judgment of the Industrial Court.

12 The Petitioner is at liberty to serve the copy of this judgment on the Respondent and take recourse to such steps as are permissible in law for recovery of amount, if the above direction is not complied with by the Respondent.

kps

(RAVINDRA V. GHUGE, J.)