

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

Writ Petition No. 1137 of 2017

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,
R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Nivrutti Yadavrao Tambe,
Age 73 years,
Occupation Retired,
R/o. Ward No.7,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

With

Writ Petition No. 1138 of 2017

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,

(2)

W.P. No. 1137 of 2017

& Group

R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Pundlik Jagannath Bhand
Age 68 years,
Occupation Retired,
R/o. Waladgaon,
Post Umbargaon
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

With

Writ Petition No. 1139 of 2017

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,
R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Ratnakar Haribhau Chatuphale,
Age 69 years,
Occupation Retired,
R/o. Ward No.7,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

With

Writ Petition No. 1140 of 2017

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,
R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Vishwas Bhimraj Vyavhare,
Age 68 years,
Occupation Retired,
R/o. Ward No.7, Trimbaknagar,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

With**Writ Petition No. 1141 of 2017**

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,
R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Narayan Sitaram Shejul,
Age 69 years,
Occupation Retired,
R/o. Ward No.7,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

With**Writ Petition No. 1142 of 2017**

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,
R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Shamrao w/o. Wamanrao Mohite,
Age 71 years,
Occupation Retired,
R/o. Samta Colony,
Near Ashoka Talkies,
Ward No.7,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

With

Writ Petition No. 1143 of 2017

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,
R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Appasaheb s/o. Eknath Wagh,
Age 70 years,
Occupation Retired,
R/o. Shrikrupa, 9B,
Sanjaynagar,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

With**Writ Petition No. 1144 of 2017**

District : Ahmednagar

The Mula Pravara Electric
Co-operative Society Limited,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar,
Through its Managing Director,
Shri Jijabhau Govind Karpe,
Age 58 years,
Occupation Service,
R/o. Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Petitioner
(Original opponent)

versus

Dattatraya s/o. Bhanudas Bankar,
Age 68 years,
Occupation Retired,
R/o. Padhegaon,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original disputant)

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*Mr. V.D. Hon, Senior Advocate, instructed by
Mr. A.V. Hon, Advocate, for the petitioner.*

Mr. R.R. Karpe, Advocate, for the respondents.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 08TH MARCH 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. While issuing notices to the respondents - employees on 08.02.2017, I had noted the submissions of the learned Senior Advocate on behalf of the petitioner - Society as under :-

"1. The petitioners in all these petitions, is the same Co-operative Society. All the respondents / employees in these matters are identically situated.

2. The petitioner is aggrieved by the order dated 31.08.2016, passed by the Co-operative Court, Shrirampur, by which, the disputes put forth by these respondents have been entertained and by the impugned order, it has concluded that the dispute is maintainable before the Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

3. Considering Section 91 and the proviso excluding an industrial dispute under Section 2(k) from the ambit of the jurisdiction of the Co-operative Court under Section 91, prima facie, I find that these matters cannot be entertained by the said Court.

4. In the light of the above, issue notice before admission to all the respondents, returnable on 03.03.2017. Until the next date of hearing in these matters, the proceedings in ABN Nos. 338 of 2006, 441 of 2008, 20 of 2009, 19 of 2009, 355 of 2007, 25 of 2010, 370 of 2008 and 376 of 2008 shall stand stayed.

5. The petitioner shall supply copies of the petition paper book for issuance of notice on/or before 10.02.2017, failing which, the ad interim protection granted shall stand vacated without reference to the Court. "

03. I have heard the learned Advocates for the respective sides at length.

04. The petitioner has cited the following judgments :-

- (1) *Hariram Tukaramji Ambulkar & others
Vs. Bhatkuli Taluka Sahakari Shetki
Kharedi Vikri Sanstha Ltd. & another
(2006 (6) Bom.C.R. 34).*
- (2) *Morinda Co-op. Sugar Mills Ltd.
Vs. Morinda Co-op Sugar Mills Workers
Union (2006 (6) Bom. C.R. 69).*
- (3) *Chandrashekhar Chintaman Vaidya
Vs. National Organic Chemical Industries
Ltd., Akola (2010(3) Mh.L.J. 434).*

05. The learned Counsel for the respondent has cited the following judgments :-

- (1) *Pralhad Vithalrao Pawar
Vs. Managing Director & another
(1998(3) Mh.L.J. 214).*
- (2) *Hariram Tukaramji Ambulkar & others
Vs. Bhatkuli Taluka Sahakari Shetki
Kharedi Vikri Sanstha Ltd. & another
(2006 (6) Bom.C.R. 34).*
- (3) *Morinda Co-op. Sugar Mills Ltd.
Vs. Morinda Co-op Sugar Mills Workers
Union (2006 (6) Bom. C.R. 69).*
- (4) *Maharashtra Co-operative Housing
Society Ltd., Bombay and others
Vs. V.S. Loni and another
(AIR 1984 Bombay 419).*

06. The disputed issue is as regards, whether the claims put forth by the respondents with regard to leave encashment and dearness allowance / monetary service benefits would fall under the definition of

Industrial Dispute under Section 2(k) of the Industrial Disputes Act, 1947 [**For short, "Act of 1947"**].

07. By the Maharashtra Act No. 20 of 1986, a proviso was inserted below Section 91(1) of the Maharashtra Co-operative Societies Act, 1960 [**For short, "Act of 1960"**]. It would be apposite to reproduce the said proviso as under :-

" Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society or refusal of admission to membership by a society to any person qualified therefor or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156 or any orders, decisions, awards and actions of the Registrar against which an appeal under Section 152 or 152A and revision under Section 154 of the Act have been provided shall not be deemed to be a dispute for the purposes of this section."

08. It is, therefore, evident that an issue which falls under Section 2(k) of the Act of 1947, would be excluded from the jurisdiction of the Co-operative Court under Section 91 of the Act of 1960.

Section 2(k) of the Act of 1947 reads as under :-

" "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

09. There can be no dispute that if the employees of a Co-operative Society fall within the definition of 'workman' under Section 2(s) of the Act of 1947 and if Society is an 'industry' under Section 2(j) of the Act of 1947, the Labour Court / Industrial Court would have jurisdiction.

10. The learned Division Bench of this Court in the matter of **Pralhad Vithalrao Pawar (supra)**, concluded that if the employee is a workman, the dispute pertaining to his service conditions and violation of service conditions would lie before the Labour Court / Industrial Court. If the employee is not a workman, the dispute would go to the Co-operative Court and the cases of termination of such non-workman would not lie before the Civil Court. The view taken by the Hon'ble Apex Court in the matter of **Co-operative Central Bank Ltd. Vs. Additional Industrial Tribunal, Hyderabad (AIR 1970 SC 245)** and in the matter of **Gujarath State Land Development Co-operative Bank Ltd. Vs. P.R. Mankad (AIR 1979 SC 1203)** were followed while taking the above view.

11. The petitioner - Society, which is the employer of these respondents, is undisputedly an 'industry' under Section 2(j) of the Act of 1947, keeping in view the law laid down by the Hon'ble Apex Court in the matter of **Banglore Water Supply and Sewerage Board Vs. A. Rajappa and others** (AIR 1978 SC 548).

12. The petitioner categorically states that all these respondents are a mixture of Store Superintendents, Accountants at the divisional level, Asst. Engineers, Cashiers and Deputy Chief Accountant. Their salaries are in between Rs. 20,000/- to Rs. 22,000/- at the time of their superannuation. It is categorically stated by the learned Senior Advocate, on instructions and on the basis of the pleadings of the petitioner, that all the respondents are workmen under Section 2(s) and the petitioner would not raise any dispute about their status if they opt to approach the Labour Court under Section 33C(2) of the Act of 1947.

13. In so far as the claims of the respondents are concerned, I find that there cannot be any dispute about Dearness Allowance. It is a prescription of law and notwithstanding the financial status of an employer, the Dearness Allowance is payable. In so far as leave encashment is concerned, the learned Senior Advocate has submitted on

instructions, that certain resolutions with regard to leave encashment are applicable to all these respondents. However, they have been subsequently modified by further resolution and the Labour Court will have to find out whether any of these respondents can indicate non-payment of any legal dues and whether there are any dues to be recovered from the petitioner - employer. He, therefore, submits that all contentions with regard to the applicability of the resolutions and computation be left open for the Labour Court to decide.

14. Shri Karpe, learned Advocate, on instructions from the respondents present in the Court, submits that they would prefer their Application (IDA) under Section 33C(2) of the Act of 1947 before the Labour Court at Ahmednagar within four weeks from today. He is agreeable to opt for the said forum only in view of the statement of the petitioner, that the issue of '*workman*' under Section 2(s) and an '*industry*' under Section 2(j) of the Act of 1947, will not be raised and calculations would be made by the Labour Court.

15. Considering the above statements, both the impugned orders are quashed and set aside. The respective disputes pending before the Co-operative Court initiated by these respondents stand disposed of. These petitions are partly allowed with the following directions :-

(a) All these respondents would be at liberty to file their applications under Section 33C(2) before the Labour Court at Ahmednagar.

(b) The petitioner, who would be the respondent in the said proceedings, would file its written statement in all these matters, as expeditiously as possible and within 45 days from the date of receipt of the Labour Court's notices.

(c) The issue of the respondents, who would be applicants before the Labour Court, being 'workman' under Section 2(s) and the petitioner - Society, being an 'industry' under Section 2(j) is closed and this issue shall not be raised for the adjudication of the Labour Court, in the light of the statements recorded in this order.

(d) After filing of the written statements, as directed, the Labour Court shall frame appropriate issues within a period of four weeks therefrom.

(e) The litigating sides would be precluded from seeking adjournments on unreasonable and trivial grounds and the Labour Court would be at liberty to reject such adjournment applications.

(f) Since the claims of these respondents - employees are with regard to leave encashment, Dearness

Allowance and similar such monetary issues, the Labour Court would endeavour to decide the effect of the service conditions / resolutions applicable to the litigating sides and shall accordingly calculate the unpaid amounts under each of the heads as claimed, after considering the oral and documentary evidence adduced by the litigating sides.

(g) Keeping in view that all these respondents have retired and are litigating for their unpaid legal dues for the past about 11 years and are more than 70 years of age, the Labour Court shall endeavour to decide the claims of the respondents, as expeditiously as possible and preferably on or before 28th day of February 2018.

(h) All contentions regarding the monetary claims of these employees, put forth by the litigating sides, are kept open and the Labour Court shall consider them on their own merits.

16. Rule is made partly absolute in the above terms.

(Ravindra V. Ghuge)
JUDGE

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