

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3209 OF 2000

1.Executive Director,
The Maharashtra State Cooperative
Cotton Growers Marketing
Federation Limited, Head Office,
Nagpur.

2. The Zonal Manager,
The Maharashtra State Cooperative
Cotton Growers Marketing
Federation Limited, Zonal Office,
Jalgaon.

..Petitioners

Versus

Sarangdhar Narayan Bairagi,
Age major, R/o Near Mahadeo
Mandir, Jamner, Dist.Jalgaon.

..Respondent

...

Advocate for Petitioner : Shri S.T.Shelke

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: June 22, 2017

...

ORAL JUDGMENT :-

1. The petitioners are aggrieved by the order dated 10.5.2000, delivered by the Labour Court, by which, Application (IDA) No.55 of 1995 has been partly allowed and the petitioners are directed to pay an amount of Rs. 39947/- towards wages, Rs.4460/- towards earned leave, Rs.800/- towards medical reimbursement and Rs.800/- towards leave travel along with 9% per annum interest.

2. On 16.6.2017, none appeared for the respondent. Even today, none appears for the respondent.

3. I have heard the learned counsel for the petitioners and have gone through the record available.

4. Section 33-C(2) of the Industrial Disputes Act, reads as under:-

“Section 33C - Recovery of money due from an employer.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.”

5. It is undisputed that the respondent was born on 26.11.1935 and his retirement age, as per Rule 12 of the petitioners / establishment is 58 years. The impugned judgment reflects this

admitted position.

6. The respondent was superannuated on 25.11.1993 after working hours, having completed 58 years of age. He received another retirement order on 6.1.1994, when he had actually retired from 26.11.1993. Thereafter, he again received a retirement notice dated 1.7.1994. Contention is that in between 26.11.1993 till 6.1.1994, the respondent was temporarily taken into service post retirement as he was physically and mentally fit.

7. A claim was put-forth under Section 33-C(2) alleging that he should be paid wages for the periods 26.11.1993 till 6.1.1994, 7.1.1994 to 15.2.1994 and 2.7.1994 till 11.5.1995 as he was sitting idle at home. Based on the said claim, he demanded leave encashment, bonus and medical reimbursement. The Labour Court has partly allowed the claim on the ground that the respondent was unauthorizedly retired, since he could have worked till 26.11.1995 and could have been retired on completion of 60 years of age.

8. It is trite law that Section 33-C(2) provides for entertaining claims of money, based on preexisting rights. Assessment of such money on existing rights and arithmetical calculations can also be undertaken under Section 33-C(2). However, seriously disputed and contentious issues like, whether the retirement age is of 58 years or

60 years and whether the claimant was unnecessarily sitting idle and hence entitled for wages and other ancillary claims, cannot be gone into under Section 33-C(2). Moreover, no law or service condition was pointed out before the Labour Court to indicate that the respondent had a vested right to continue in service till the age of 60 years.

9. This Court while admitting the petition on 25.7.2000, has stayed the impugned judgment by granting prayer clause (c).

10. Considering the above and the crystallized position of law, this petition is allowed. The impugned order dated 10.5.2000 stands quashed and set aside and Application (IDA) No.55 of 1995 stands rejected. Rule is made absolute in these terms.

11. In order to ensure that the respondent is not rendered remediless, he would be at liberty to raise an industrial dispute under the Industrial Disputes Act, 1947 for putting forth any claims based on such disputed issues, if so desired.

(RAVINDRA V. GHUGE, J.)

...