IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5016 OF 2017
(Central Bank of India and others Vs. Bhishekkumar Ambar Patil)
WITH WRIT PETITION NO.5029 OF 2017
(Central Bank of India and others Vs. Abasaheb Annasaheb Kale)

Mr.S.V.Warad, Advocate for the petitioners.
Mr.Ashok V.Patil, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/10/2017

PER COURT :

1. In both these petitions, the petitioner / Bank is aggrieved by the interim award dated 28/04/2016 passed by the Industrial Tribunal, Ahmednagar by which the petitioners are directed to reinstate the respondents/workmen and pay him wages as per the 7th Bipartite Settlement till the disposal of the reference.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. Mr.Patil, learned Advocate for the respondents/workmen relies upon the judgment of the Apex Court in the matter of Dena Bank Vs. D.V.Kundadia [(2011) 15 SCC 690] to support his contention that a writ petition against an interim award or an interim order is not maintainable.

3. I have considered the submissions of the learned Advocates and have gone through the petition paper book and the judgment cited.

4. It is trite that if an order under challenge is perverse and erroneous and likely to cause grave injustice, the same can be interfered with. In the Dena Bank case (supra), the Hon'ble Apex Court has not ruled that even if the interim order is perverse and erroneous and on the face of it is an unsustainable order, still no challenge should be maintained against such an order.

5. It is settled law and as is seen in catena of judgments that the Hon'ble Apex Court and the various High Courts have ruled that interim relief cannot be of the nature of a final relief and final relief cannot be granted at an interim stage when the entire adjudicatory process is to be undertaken.

1. State of U.P. Vs. S.K,Balmiki [2009(3) CLR 550] [Supreme Court],
2. Bhakra Byas Managing Board Vs. Suresh and another [2009(3) CLR 84] [Supreme Court]

6. In the first case, Mr.B.A.Patil, who is the second party workman before the Reference Court, had worked as a *Safai*

Karmachari on daily wages from 08/01/2007 till 30/09/2008 and from 07/07/2010 till 19/07/2011. The reference case has been registered in 2015 before the Tribunal which is after 4 years of the disengagement of Mr.Patil.

7. In the second case of Mr.A.A.Kale, he has worked from 03/05/2004 till 31/08/2010 and 06/09/2010 till 31/05/2011, as a daily wager.

8. In both the above cases, these workmen are out of employment for the last 6 years and an industrial dispute has been raised after 4 years of their disengagement. It is yet to be established before the Tribunal as to whether these two employees have been recruited by following the due procedure of law and as to whether there are any posts of *safai karmachari* available with the petitioner/Bank, though Mr.Patil, learned Advocate for the workmen submits that about 40 posts are vacant with the petitioner/Bank only in Ahmednagar district.

9. It is stated by Mr.Patil that the first workman was drawing Rs.40/- per day and the second workman was drawing Rs.50/- per day. Other similarly situated workers are being paid monthly wages

in between Rs.20,000/- to Rs.25,000/- p.m.

10. The petitioner/Bank is before this Court contending that without a complete adjudication, the Tribunal could not have granted reinstatement and could not have further directed the Bank to pay wages as are payable to permanent workmen covered by the long term Bipartite Settlement. Merely on the basis of the pleadings, the Tribunal could not have granted final relief at an interim stage.

11. It requires no debate that the eligibility of a candidate for benefits flowing from long term settlements is to be established as a matter of right and unless such a right is crystallized, the Tribunal could not have granted wages as per the 7th Bipartite Settlement without the recording of oral and documentary evidence. As such, the impugned interim award cannot be sustained.

12. These two workers are litigating with the petitioner/Bank. Their last drawn wages in 2011 were @ Rs.1,200/- per month and Rs.1,500/- per month respectively. Similarly situated workers, who are permanent and are entitled to the 7th Bipartite Settlement would be earning a minimum of Rs.20,000/- per month.

13. Considering the above, I deem it proper to direct the petitioner/ Bank to pay an amount of Rs.2,000/- per month to these workers only to reduce their rigours of litigation and by imposing certain conditions.

14. Both these petitions are, therefore, partly allowed. Direction at Clause 2 of the operative part of the interim award is set aside and is replaced by a direction to the petitioner/Bank to pay Rs.2,000/- per month to these second party workmen on or before the 10^{th} day of each month beginning from 01/06/2017, to be deposited before the Industrial Tribunal, Ahmednagar. These workmen would then withdraw the said amounts.

15. Reference (IT) Nos.14/2015 and 15/2015 are expedited and the Industrial Tribunal shall endeavour to decide the same on or before 31/12/2018. In the event, these workers succeed in the reference cases, the amounts paid to them shall be adjusted with their legal dues. In the event, they fail in the reference cases, the amounts paid under the orders of this Court shall not be recovered from them.

(Ravindra V.Ghuge, J.)