

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10794 OF 2014

The Chairman,
M/s Navjivan Sahakari Sanstha,
62, N-8, Cidco, Aurangabad.

..Petitioner

Versus

1. Vilas Eknath Sawji,
Age 51 years, Occ. Nil
r/o Mangal Peth, Khultabad,
District Aurangabad.

2. District Supply Officer,
Aurangabad.

..Respondents

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Advocate for Petitioner : Shri Yenge Balaji B.
Advocate for Respondent 1 : Shri Golewar V.P.
AGP for Respondent 2 : Shri Tiwari S.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 16, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment dated 18.6.2014

vide which, Complaint (ULP) No.22 of 2009 filed by the respondent No.1 complainant has been allowed and the petitioner has been directed to implement the settlement dated 11.8.2008, which was accepted in Complaint (ULP) No.175 of 2003 and the complaint was accordingly disposed off.

5. I have heard the strenuous submissions of the learned Advocates. The controversy as to whether the complainant is reporting for duties or not, has been dealt with by earlier orders passed in this matter. It would be apposite to reproduce the order dated 24.2.2016 and the order dated 8.8.2016, passed by this Court, as under:-

Dated 24.2.2016

“1. A peculiar situation has arisen before the Court.

2. On the one hand, the petitioner contends that the respondent has been reinstated in service, but he continues to remain absent and on the other hand, learned Advocate for the respondent submits that the compromise arrived at between the parties dated 11/08/2008 has not been complied with by the petitioner. The conditions set out therein expect the petitioner to initiate steps. He further submits that whenever he reports for work at the petitioner premises, the petitioner pulls down the shutters of the shop and prevents the respondent from entering the premises.

3. In the light of the above, Mr.Yenge learned Advocate submits that the District Supply Officer, Aurangabad can be added as respondent No.2 and he can be a witness to whether the respondent reports for duties or not. Mr.Golewar has no objection.

4. In the light of the above, the petitioner is granted leave to add the District Supply Officer, Aurangabad as respondent No.2. Notice be issued to the added respondent. Learned AGP waives service of notice.

5. The respondent No.1 shall report for duties on 29/02/2016 at 10.30 on the following address :

Navjivan Sahakari Grahak Sanstha,
Shop No.117, Harsh Nagar,
Near Kadariya Masjid, Aurangabad.

6. Learned AGP shall instruct the added respondent No.2 / District Supply Officer to remain present at the said shop, which is situated in Aurangabad at 10.30 a.m. On 29/02/2016 and ensure that the respondent No.1 is allowed to join duties by the petitioner.

7. After the above exercise is completed, respondent No.2 / District Supply Officer shall file a short affidavit indicating the developments that would take place on 29/02/2016. Affidavit to be filed on or before 08/03/2016.

8. Stand over to 11/03/2016 for further consideration.”

Dated 8.8.2016

1. *As recorded in my order dated 24/02/2016, the peculiar situation before the Court has become even more peculiar.*

2. *Mr.Yenge submits on instructions from the petitioner that the keys of the shop are being handed over to Adv.Mr.Golewar for the respondent. Mr.Golewar submits that the keys of the shop be handed over by the petitioner to respondent No.1. Primafacie, this indicates that despite the petitioner having volunteered to hand over the keys to respondent No.1, the respondent does not desire to accept the keys from the petitioner.*

3. *Since the District Supply Officer has been added as respondent No.2, I deem it proper to direct as under :*

[a] The keys of the shop be handed over to the learned AGP.

[b] Learned AGP makes a statement that he has received the keys (single key) from advocate Mr.Yenge and will hand it over to the District Supply Officer.

[c] Respondent No.1/Employee shall approach respondent No.2 on or before the closing of office hours on 10/08/2016, shall make an application for seeking custody of the keys and upon being handed over the keys, shall write an acknowledgment receipt of having received the keys.

[d] Respondent No.1 shall furnish 2 photographs and necessary documents to the D.S.O. for enabling the petitioner to prepare his "Naukarnama".

[e] The petitioner shall initiate steps for issuing the

“Naukarnama” in favour of respondent No.1 as expeditiously as possible and preferably on or before 26/08/2016.

[f] If the “Naukarnama”, as directed above, is not prepared, the petitioner shall deposit an amount of Rs.50,000/-in this Court within 2 (two) weeks after 26/08/2016, failing which the petitioner shall be deprived of interim relief.

[g] Respondent No.1, after opening the shop, shall take a stock of the food grains available and shall accordingly inform respondent No.2 in writing about the inventory.

4. Stand over to 19/09/2016.

6. It is not now in dispute that the petitioner has handed over the keys of the shop to respondent No.1. He is conducting the shop as per the existing terms and conditions. Issue that remains is as to whether the petitioner can be permitted to revert back to the settlement placed on record by joint purshis dated 11.8.2008 in Complaint (ULP) No.175 of 2003, which was decided by the Labour Court on the basis of the settlement.

7. There can be no dispute that the petitioner is an industry under Section 2(j) of the Industrial Disputes Act, 1947. It runs a fair price shop and according to the complainant, is said to be operating 16 such shops. However, Shri Yenge, learned Advocate for the

petitioner submits, on instructions, obtained from the petitioner that the society runs only two shops.

8. I have perused the agreement dated 25.6.1999, between the petitioner and the complainant. Based on the said agreement, Complaint (ULP) No.175 of 2003 was disposed off by the Labour Court. I do not find that the impugned judgment by which the petitioner is directed to implement the said agreement could be termed as being a perverse or erroneous judgment for the reason that if the petitioner is a party to the agreement based on which the litigating sides had Complaint (ULP) No.175 of 2003 disposed off under the orders of the Labour Court, the petitioner cannot be permitted to resile from the said settlement in an indirect manner.

9. The Industrial Court has concluded that the petitioner has not acted upon the said settlement and therefore the complainant was required to approach the Industrial court for which Rs.10,000/- costs was awarded. I do not find any error in the said direction since the issue of implementation of the settlement of 1999 was kept pending till 2009, when the complainant filed his complaint before the industrial Court.

10. In the light of the above, this petition being devoid of merits is dismissed. Rule is discharged. Needless to state, the litigating sides

would continue to be bound by the settlement dated 25.6.1999 and in the event the respondent / complainant has any further service grievance, he would be at liberty to take recourse to such remedy, as may be available in law. For the said purpose, all contentions of the litigating sides are kept open.

11. So also all the contentions of the parties in Criminal Complaint (ULP) No. 1800026 of 2014 are kept open.

(RAVINDRA V. GHUGE, J.)

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