

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

WRIT PETITION NO. 4307 OF 2014

SAMPAT DASHRATH KALE AND OTHERS
VERSUS
USAV FORGING PRIVATE LIMITED

...
Advocate for Petitioners : Shri Barde Parag Vijay.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st January, 2017

Per Court:

1 Leave to correct the name of the Respondent. Correction be carried out forthwith.

2 As recorded in the earlier orders passed by this Court, despite serving the Respondent through substituted service by paper publication in daily "Lokmat", Ahmednagar Edition, none has appeared for the Respondent. The matter was adjourned even after publication.

3 The Petitioners are aggrieved by the judgment of the Industrial Court dated 29.10.2013 by which Complaint (ULP) No.75/2012 has been dismissed.

4 I have heard the submissions of Shri Barde, learned Advocate for the Petitioners and with his assistance, I have gone through the petition paper book and the record available.

5 Considering the order that I intend to pass, I am not required to advert to the entire submissions of the Petitioners. Suffice it to say that the Petitioners had filed Complaint (ULP) No.79/2010 before the Industrial Court claiming the benefits under the settlement which was placed on record. By the compromise on 06.02.2011 before the Panel of the Lok-Adalat, the matter was settled between the parties and it was agreed by the Respondent/ Management that the settlement dated 26.11.2010 shall be implemented and the dues flowing under the settlement would be paid to these Petitioners.

6 Since the said compromise before the Lok-Adalat was not implemented, the Petitioners filed Complaint (ULP) No.75/2012 before the Industrial Court. By an interim order passed by the Industrial Court dated 05.10.2012, the Respondent was directed not to shift, sell and move the machineries, movable and immovable properties during the pendency of the complaint. The Respondent was also directed to pay the salaries of the Complainants for the month of May, 2012.

7 By the impugned judgment, the complaint filed by the Petitioners has been dismissed primarily for two reasons. Firstly, that the Respondent had permanently closed down the factory from 01.05.2012 and secondly that the Petitioners suppressed the fact of closure before the Industrial Court.

8 Considering the above conclusions of the Industrial Court, I have scanned through the record and proceedings which are before the Court. The Respondent/ Management did not lead any evidence before the Industrial Court. Besides filing the Say/ Written Statement, no evidence was led. In the entire Say/ Written Statement dated 22.08.2012 filed by the Respondent, it was contended that the company is facing losses and cannot operate its business. However, the Respondent has nowhere stated that it has permanently closed down its factory from 01.05.2012.

9 It is trite law that a mere assertion or statement that the factory has been closed down, is not sufficient for the Industrial Court or any other Court to conclude that the factum of closure is proved. The closure of the factory cannot be established by the word of mouth or by making a bald statement in the Say or Written Statement. If the workers are less than 100 in the factory, Chapter V-A of the Industrial Disputes Act,

1947 would be applicable and if the Employer desires to close down the factory, a formal notice of closure has to be issued and all the workmen on the rolls of the factory, as on the date of closure, are to be discharged by following Section 25-F r/w Section 25-G of the Industrial Disputes Act, 1947.

10 From the entire record and proceedings before the Court, I do not find that the Respondent has issued a formal notice of closure or has paid the retrenchment compensation to all the workers on its rolls while discharging them on account of the closure. In the absence of an iota of evidence with regard to the factum of closure, the Industrial Court could not have concluded that the factory has been permanently closed down from 01.05.2012 and that this aspect is suppressed by the Petitioners. It is equally settled that until the factory is permanently closed down and if there are no other legally permissible impediments, the Employer has to pay the wages to the workers unless the facts of the case would make out a different situation.

11 Considering the above, I find that the Industrial Court has erroneously relied upon the oral statement of the Respondent that the factory has been closed down. The Petitioners have made a solemn statement that there is no document before the Industrial Court to

indicate such formal closure, no notice of closure or discharge was served upon the Petitioners, no payment of retrenchment compensation was made by the Respondent and statutory authorities like the Electricity Company, MIDC or Factories Inspector were not informed about the closure.

12 Considering the above, I find that the impugned judgment of the Industrial Court dated 29.10.2013 is perverse and erroneous. This Writ Petition is, therefore, allowed. The impugned judgment is quashed and set aside. Complaint (ULP) No.75/2012 is restored to the file of the Industrial Court, Ahmednagar. The Petitioners shall appear before the Industrial Court on 18.02.2017. The notice shall be issued to the Respondent in the complaint by the Industrial Court. In the event, the litigating sides desire to lead additional evidence, they are at liberty to do so. Pursuant to which, the Industrial Court shall decide Complaint (ULP) No.75/2012 on it's own merits.

13 Needless to state, since the impugned judgment is quashed and set aside, interim relief granted by the Industrial Court dated 05.10.2012, which was to last till the decision in the main complaint, shall stand restored.

14 The record and proceedings be transmitted back to the Industrial Court, Ahmednagar forthwith.

kps

(RAVINDRA V. GHUGE, J.)