

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11997 OF 2016

Vice Chancellor,
Mahatma Phule Krishna Vidyapeeth
Rahuri, District Ahmednagar

..Petitioner

Versus

1. Pramila Bhaskar Harischandre,
Age 50 years, Occ. Household,
R/o Dehare Ves, Vambori,
Post Vambori, Tq. Rahuri,
District Ahmednagar.

2. Mahesh Bhaskar Harishchandre,
Age 23 years, Occ. Nil
R/o Dehare Ves, Vambori,
Post Vambori, Tq. Rahuri,
District Ahmednagar.

..Respondents

...
Advocate for Petitioner : Shri Navandar Manish N.
Advocate for Respondents : Shri Barde Parag Vijay
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: January 30, 2017
...

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 of the Industrial Court dated 24.2.2016, by which, Complaint (ULP) No.87 of 2012, filed by the respondents has been allowed to the extent of respondent No.2 - Mahesh Bhaskar Harishchandre.

5. The petitioner / University, as is noticed by this Court for the second time, has filed a Writ Petition based on skeletal documents despite the fact that the impugned judgment has been delivered after a complete trial and adjudication in Complaint (ULP) No.87 of 2012.

6. In the Written Statement placed before the Court, it appears that the petitioner has taken a stand that after the respondent No.2 Mahesh became 18 years of age on 30.11.2010, he has not filed an application for appointment on compassionate basis in place of his father Bhaskar, who died on 12.2.1996, within a period of one year. It is in this backdrop that the respondents had produced a list of documents Exhibit 9, accompanied by an application by Mahesh dated 22.2.2011, which prima facie, would indicate that Mahesh had made this application within one year from the date he became 18 years of age, which is 30.11.2010.

7. Though it is strenuously submitted by Shri Barde that the

concerned documents were granted an Exhibit number as Exhibit U-9/1 along with the annexure, I find the following lacunas in the oral evidence as well as the reasons set out by the Industrial Court:-

(a) The petitioner did not cross-examine the claimants, especially Mahesh and did not lead any oral and documentary evidence.

(b) As required by the Evidence Act, the document which is said to be an application dated 22.2.2011, filed by Mahesh, there should have been evidence to indicate that the said document was served upon the Registrar of the petitioner.

(c) The Industrial Court has not referred to the said document in the entire judgment, which is quite surprising since the only defense of the petitioner is that Mahesh did not file an application for compassionate appointment within one year from the date he became 18 years of age.

(d) If the document Exhibit U-9/1 would have been properly proved, it would have been established that he had made the application on/or about the 83rd day from becoming 18 years old. If this was the piece of evidence before the Industrial Court, this was an open and shut case since the Government

Resolution dated 11.9.1996, requires an application to be filed within one year by the eligible person from the date of death or from the day such an applicant became 18 years of age, which is mandatory.

(e) In such circumstances, not only is it required that the author of the document should prove the document, it is also necessary that the service of the document is to be proved so as to complete the sequence of events, considering the fact that the time would be calculated from the date of presenting the application.

(f) Had the petitioner participated in the proceedings and would have assisted the Industrial Court, I would not have been required to remand this matter to the Industrial Court.

8. Considering the above, this petition is partly allowed and the impugned judgment of the Industrial Court dated 24.4.2016 is quashed and set aside and Complaint (ULP) No.87 of 2012 is restored to the file of the Industrial Court on the following conditions:-

(A) The petitioner shall deposit costs of Rs.25,000/- with the Industrial Court, within six weeks from today.

(B) The litigating sides shall appear before the Industrial

Court on 18.2.2017 and formal notices need not be issued.

(C) After the costs are deposited, the original complainants shall withdraw the said costs in equal proportions without conditions.

(D) Both the litigating sides are at liberty to lead additional oral and documentary evidence.

(E) The Industrial Court shall decide the said complaint expeditiously and shall consider the evidence recorded earlier as well as the additional evidence and shall decide the complaint on its own merits.

(F) Considering that the evidence act is strictly applicable to the proceedings before the Industrial and Labour Courts, unlike the Code of Civil Procedure, the Industrial Court shall also consider a request for production of documents, if made by any of the litigating sides and would decide the complaint afresh.

(G) In the event the petitioner fails to deposit the costs, it shall lose its right to cross-examine the complainants and lead oral and documentary evidence.

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

(RAVINDRA V. GHUGE, J.)

...