

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 902 OF 2016**

M/S. COMUNIDADE DE MAPUSA,
Near St. Jeromis Church,
Mapusa, Goa.

Herein represented by its Attorney,
Mr. Ryan Braganza,
Aged 36 years, Bachelor,
Resident of H. NO.112-C,
Angod, Mapusa, Goa 403 507.

.... Petitioner

V e r s u s

Shri Raghuvir S. Parsekar,
House No.15-I (18-E old),
Menezes Wado, Bastora,
Bardez-Goa.

..... Respondent

Adv. Valmiki Menezes for the Petitioner.

Adv. Arunkumar V. Nigalye for Respondent

Coram:- M. S. SONAK, J.
Date:- 24th April, 2017

ORAL ORDER:

Heard Mr. V. Menezes, the learned counsel for the petitioner and Mr.
A. Nigalye, the learned counsel for the respondent.

2. The reliefs applied for in this petition read as follows:

(a) This Hon'ble Court be pleased to call for the records and proceedings of
Reference No.IT-16/2006 before the Industrial Tribunal of Goa, examine the

same quash and set aside the impugned Award.

(b) Pending final disposal of this petition, this Hon'ble Court stays the effect of Final Notice dated 23/8/2016 annexed as Exhibit H, passed by the Mamlatdar of Bardez in proceedings bearing No.MAM/BAR/REC/Lab-Dept/1/2015.

(c) Ad-Interim Relief in terms of prayer clause (b) above.

(d) Ad-Interim Ex parte relief in terms of prayer clause (b) above.

3. In prayer clause (a) the date of the impugned awards have not been specified, however, there is no dispute that Part (I) award, in which, it is held that the termination of the services of the respondent without holding any inquiry was improper is dated 3/9/2010 and the Part (II) award which actually directs reinstatement along with consequential benefits is dated 2/2/2010. This petition was instituted on 1/8/2016 i.e. well after four years even from the date of the Part (II) award.

4. On 22/9/2016 this Court made the following order :

WRIT PETITION NO. 902 OF 2016

M/S. COMUNIDADE DE MAPUSA, REP.

BY ITS ATT. MR. RYAN BRAGANZA,

... Petitioner

Versus

SHRI. RAGHUVIR S. PARSEKAR.,

... Respondent

Mr. Valmiki Menezes, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 22nd September, 2016.

P.C:

Heard Mr. Menezes, the learned Counsel for the petitioner.

2. An award passed in the year 2012 and final notice dated 23.08.2016 levying an amount of Rs.1,27,400/- towards back wages for the period from 01.11.2012 to 31.10.2014, is sought to be challenged in this petition. Undisputedly, the reference before the Industrial Tribunal was contested. The copy of the impugned order was served on the petitioner. Not only that, there were several other notices issued for recovery of the back wages. In such circumstances, I do not find that the challenge namely, to the award passed in the year 2012, can be entertained on account of gross delay and laches.

3. Insofar as the notice dated 23.08.2016 is concerned, it is contended that the respondent has been reinstated on 01.08.2016 and the back wages till the date of the award are already paid. It is submitted that till 01.08.2016, the respondent did not report himself for reinstatement and as such, he would not be entitled to back wages for the period subsequent to the passing of the award as claimed in the final notice. In such circumstances, issue notice to the respondent, limited to the challenge to notice dated 23.08.2016. The notice is made returnable on 17.11.2016.

4. There shall be ad-interim stay of the impugned notice dated 23.08.2016, on condition of the petitioner depositing the amount of Rs.1,27,400/-, before this Court, within a period of two weeks from today.

C. V. BHADANG, J

[Emphasis supplied]

5. Mr. Menezes, the learned counsel for the petitioner, however, submits that the observations in para 2 of the aforesaid order are restricted to the challenge to the first Notice of Demand dated 17/8/2015, which, Notice of demand, the petitioner has already complied with. Mr. Menezes, however, submits that the said observations ought not to prevent the petitioner from challenging the recovery certificate dated 23/8/2016 and to urge grounds

attacking Part II Award made by the Industrial Tribunal, to the extent, such attack is necessary in order to challenge the recovery certificate dated 23/8/2016. Mr. Menezes submits that the petitioner, before the Industrial Tribunal, had made a specific application seeking leave to lead evidence in order to establish the misconduct of the respondent. Such application was never considered, though the Tribunal, was duty bound to consider the same. Secondly, Mr. Menezes submits that the service conditions of the respondent were governed by the rules framed under the Code of Communitade and to this extent, there was exclusion of the jurisdiction of the Industrial Tribunal. Mr. Menezes submits that since both these are matters which go to the root of the jurisdiction of the Tribunal, the challenge, to the impugned award is liable to be considered so that, the recovery certificate dated 23/8/2016 is not enforced against the petitioner.

6. As noted earlier, this Court in its order dated 22/9/2016 after taking cognizance of the gross delay and laches on the part of the petitioner had already noted that the challenge of the award made in the year 2012 cannot be entertained. This means that in effect by order dated 22/8/2016, the challenge to the awards, including in particular, to Part II Award stands dismissed. In the context of challenge to the recovery certificate dated 23/8/2016, therefore, it is not possible to once again entertain any grounds

which, in effect, challenge the Part II award itself.

7. In para 3 of the order dated 22/9/2016 it was clarified that notice was issued to the respondent in order to examine the contention that it is the respondent who failed to present himself for reinstatement and in this regard, possibly, an issue would arise as to whether the respondent was entitled to claim for back wages or consequential benefits despite the alleged lapse on his part to present himself for reinstatement. This position is quite clear from the perusal of para 3 of the order dated 22/9/2016.

8. It now transpires that the respondent had himself written to the petitioner seeking for reinstatement. Accordingly, there is no material on record to proceed on the basis that the petitioner was eager to reinstate the respondent but it is the respondent, who failed to avail the reinstatement.

9. Since, the aforesaid, was a limited issue and further since, the petition is against the Part (II) Award already stands dismissed by virtue of the order dated 22/9/2016, there is no point in entertaining the petition any further.

10. The petition is accordingly dismissed. The respondent shall be at

liberty to withdraw the amounts deposited by the petitioner in this Court in pursuance of the interim protection granted by this Court.

11. All concerned to act on the basis of authenticated copy of this order.

M. S. SONAK, J.

ap/-