

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 102 OF 2016
AND
MISC.CIVIL APPLICATION NO. 463 OF 2017

1. Mr. Narsinvrao S. Chawan @ Swapnil,
Son of Shyamrao Chawan,
Age 19 years, Student,
Indian National, r/o. Flat No.S1,
2nd Floor, Near Microwave Station,
Monte-Hill, Margao, Goa.
2. Mrs. Ranjana chawan,
wife of Shyamrao Chawan,
aged 48 years, married,
Indian National, r/o. Flat No.S1,
2nd Floor, Near Microwave Station,
Monte-Hill, Margao, Goa. ... Applicants/Appellants

Versus

Mr. Janu Babuso Naik,
s/o. Mr. Babuso Naik,
age 43 years, Service,
r/o. H.No.226,
Near Mahalami Temple,
Bandora, Ponda, Goa. ... Respondent

Shri J. Abreu Lobo, Advocate for the Applicants/Appellants.
Shri N. Govekar, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 18th August 2017

ORAL JUDGMENT:

Heard Shri J.A. Lobo, learned Advocate for the
applicants/appellants and Shri N. Govekar, learned Advocate

for the respondent.

2. It is the case of the applicants that they were seeking to produce a certified extract of the Pay Bill Register of the Public Works Department revealing that the respondent was paid the salary from March, 2013 to February, 2014. The learned Presiding Officer, MACT had arrived at a finding that the respondent was absent from work for a period of 6 months and on that count had awarded him an amount of ₹83,148/- towards the loss of salary for the stated period without treating that it was the leave period availed of by the respondent without pay. This document was therefore necessary and relevant to establish that the respondent had actually drawn the salary during the relevant period and that there was no loss of income. The document in question was a public document of which the applicant had no knowledge nor was it in their possession and which was procured only after recourse to the provisions of the Right to Information Act. The application was supported by an extract of the Pay Bill Register corroborating the contents of the application.

3. The respondent had opposed the application on the premise that the applicant had not relied upon the said document during the course of the trial and that it could not be produced now in appeal. It was also his case that there was no legal sanctity to the production of the said document which was only to mislead this Court and that the respondent would be denied a fair opportunity of challenge in case the same was allowed to be produced on record. Further, the document in question would not assist in arriving at a decision in the controversy between the parties and that the respondent would suffer great prejudice in case it was allowed to be produced on record.

4. i have considered the provisions of Order XLI Rule 27 CPC and besides perused the document in question. Moreover, i have also perused the judgment under challenge in which the learned Presiding Officer of the MACT had arrived at a finding at para 23 of the impugned judgment that the respondent was absent from duty for a period of 6 months which tantamounted to a loss of income for a period of 6 months and on that premise awarded an amount of ₹83,148/-

towards the loss of income. It is apparent from the record now produced by the applicants that the respondent was actually paid for the period of absence of 6 months from February, 2013 to December, 2013. There is no scope for the respondent to urge that this document is either manipulated or fabricated. A valuable opportunity would be lost to the applicants to establish that the respondent was being unduly compensated towards the loss of income when he had actually drawn the salary for the said period of leave. In view thereof and as it has a material bearing on the lis between the parties, the applicants are allowed liberty to rely on the said document.

5. Since the liberty is granted to the applicants to rely upon and produce such document, it follows as a necessary sequel that the matter be remanded to the learned MACT for a due consideration and decision in accordance with law. It would also give a fair opportunity to the respondent to subject the applicants to cross-examination on the veracity and the contents of the said document which is now allowed to be produced on record. Accordingly, the impugned judgment and

award is quashed and set aside and the matter remanded to the learned MACT for a consideration afresh leaving all contentions open. The parties are accordingly directed to appear before the learned MACT, Ponda on 11/09/2017 at 10.00 hrs. The application and the appeal stand disposed off accordingly.

NUTAN D. SARDESSAI, J.

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