

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11136 OF 2016

The Chief Officer, Trimbakeshwar Nagar Palika ... Petitioner
Vs.
Renukadas Pandit Manthekar ... Respondent

Mr. Rameshwar N. Gite for Petitioner.
Mr. Neel Helekar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JULY 10, 2017

P.C. :

Heard Mr. Gite, learned Counsel for the petitioner and
Mr. Helekar, learned Counsel for the respondent at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged the judgment and order dated 16.04.2014 passed by the learned Judge, First Labour Court, Nasik in Application (IDA) No.15 of 2011. By that order, the Labour Court partly allowed the application made by the respondent under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short 'Act') and directed the petitioner to pay amount of Rs.5,64,053/- to the respondent within one month, failing which, respondent will be entitled to future interest @12% p.a. till its realization.

3. Respondent had instituted Complaint (ULP) No.1004 of 1996 along with Gangaram Budha Dachake [Complainant in Complaint (ULP) No.1005 of 1996] and Kalu Bachake [Complainant in Complaint (ULP) No.1006 of 1996] against the petitioner under Section 28 read with Items 5, 6 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

(for short 'Act'). By order dated 11.08.2000, Industrial Court, Nasik allowed the complaints. Operative part reads thus,

“

ORDER

1. The Complaints (ULP) No.1004/96, 1005/96 and 1006/96 are hereby allowed.
2. It is declared that the Respondent has committed unfair labour practices under Items No.5 and 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.
3. The Respondent Nagar Palika is directed to stop and desist from engaging such unfair labour practices.
4. The Respondent is further directed to give the status and benefits of permanency to the complainants from 11-12-1996 by obtaining the permission if necessary from the concerned authorities.
5. The Respondent is directed to pay arrears of consequential benefits to the complainants w.e.f. 11-12-96 within three months from the date of the order.
6. No order as to costs.”

4. Aggrieved by this decision, petitioner instituted Writ Petition No.353 of 2002 in this Court. Pending that Petition, on 25.08.2008, General Body of petitioner Council passed resolution No.106 resolving to reinstate the respondent in the employment of the petitioner. The resolution recorded that the respondent is in the employment of the petitioner prior to 1993 and the Government had issued directions to absorb daily wagers in the employment. The Resolution further recorded that such absorption shall be subject to the sanction of Divisional Commissioner, Nasik Division, Nasik. On 16.09.2009, Writ Petition was disposed of as infructuous in view of the Resolution dated 25.08.2008.

5. On 15.03.2010, Divisional Commissioner, Nasik accorded sanction for absorption of the respondent. Condition No.6 laid down that the services put in by the respondent on daily wages shall not be taken into consideration for extending any financial or service benefits.

6. Respondent instituted Application under Section 33-C(2) of the Act for issuing direction to the petitioner herein to pay amount of Rs.5,64,053/- together with interest @ 12% from 11.12.1996. Petitioner filed written statement dated 25.07.2011 resisting that application. By the impugned order, the Labour Court partly allowed the application, as indicated hereinabove. It is against this order, petitioner has instituted the present Petition.

7. In support of this Petition, Mr. Gite strenuously submitted that clause 4 of the operative part of the order directed the petitioner herein to give the status and benefits of permanency to the respondent from 11.12.1996 **by obtaining the permission, if necessary from the concerned authorities.** He submitted that in pursuance of this direction, petitioner approached Divisional Commissioner, Nasik seeking permission. By order dated 15.03.2010, the Divisional Commissioner accorded approval subject to conditions. Condition No.6 stipulated that the services put in by the respondent on daily wages basis shall not be taken into consideration for extending any financial or service benefits. He submitted that petitioner is bound by the order dated 15.03.2010 passed by the Regional Director of Municipal Administration and Divisional Commissioner, Nasik. He, therefore, submitted that the Labour Court was not justified in directing the Corporation to pay amount of Rs.5,64,053/- to the respondent. Mr. Gite further submitted that petitioner Municipal Council depends upon the financial aid of the Government. Even on this count also it is bound by the direction issued by the Divisional Commissioner.

8. On the other hand, Mr. Helekar supported the impugned order. He invited my attention to paragraphs 16 and 17 of the impugned order. He submitted that in paragraph 17, the Labour Court held that condition

No.6 depriving the respondent from the past financial and service benefits is contrary to order dated 11.08.2000 passed by the Industrial Court, Nasik, which has attained finality. He, therefore, submitted that no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. I have already extracted operative part of the order dated 11.08.2000. A perusal of clauses 4 and 5 shows that the Tribunal directed the petitioner herein to give the status and benefits of permanency to the respondent from 11.12.1996 by obtaining permission, if necessary from the concerned authorities. The petitioner was also directed to pay arrears and consequential benefits to the respondent with effect from 11.12.1996 within 3 months from the date of the order. It is not in dispute that aggrieved by this decision, petitioner had instituted Writ Petition in this Court. In view of the Resolution dated 25.08.2008 passed by the General Body, this Court disposed of the Petition on 16.06.2009 as infructuous. In other words, the order dated 11.08.2000 passed by the Industrial Court in Complaint (ULP) No.1004 of 1996 had attained finality.

10. The moot question is whether the Divisional Commissioner could have imposed condition No. 6 of the order dated 15.03.2010. Mr. Gite submitted that as clause 4 of the operative part of the order required petitioner to obtain permission, while according permission, Divisional Commissioner was fully justified in imposing condition No.6. I do not find any merit in this submission. It is no doubt true that clause 4 required petitioner to obtain permission, if necessary from the concerned authorities. While granting permission, Divisional Commissioner could

not have imposed condition contrary to clauses 4 and 5 of the operative part of the order dated 11.08.2000.

11. By order dated 11.08.2000, the Industrial Court directed petitioner to give status and benefits of permanency from 11.12.1996 as also pay arrears and consequential benefits from 11.12.1996. The Divisional Commissioner could not have imposed condition No.6 which has the effect of nullifying order dated 11.08.2000, which had attained finality. If at all the Divisional Commissioner was of the view that said condition was necessary, he should have moved this Court for appropriate clarification. A perusal of order dated 15.03.2010 shows that the Divisional Commissioner was aware of order passed by the Industrial Court, Nasik as also order dated 16.06.2009 passed by this Court. In such state of affairs, without obtaining appropriate clarification from this Court, he was not justified in imposing condition No.6. The Labour Court has dealt with this aspect in paragraphs 16 and 17 of the impugned order. In view thereof, I do not find that the Labour Court has committed any error in that regard. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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