

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12321 OF 2016

The Sarpanch/Gramsevak,
Grampanchayat Yeliv,
Tal-Malshiras, District-Solapur.

.. Petitioner

Vs.

Dhanoji Rau Mohite

.. Respondent

Mr. Anand S. Kulkarni for the petitioner.

Mr. Jitendra M. Pathade for the respondent.

CORAM : A.K. MENON, J.

DATED : 19TH DECEMBER, 2017

P.C. :

1. By this petition, the petitioner represented by the Sarpanch has challenged the award dated 1st March, 2016 passed by the Labour Court, Solapur in Reference (IDA)No.12 of 2014. By the impugned order, the petitioner has been directed to reinstate the respondent with continuity of service and to pay 50% of the back wages. The order of discharge dated 3rd October, 2013 issued to the respondent has also been declared as illegal and void.

2. Briefly stated the facts are as follows:-

The respondent was employed as a Peon with Grampanchayat-petitioner

since 1st July, 1991. It is the case of the petitioner that on or about 30th August, 2013, the respondent was forced to tender his resignation. On 18th September, 2013, the resignation by the respondent is stated to have been placed at a meeting of Grampanchayat whereat the respondent stated that he had submitted the resignation was given “mistakenly”. That on 3rd October, 2013 a letter withdrawing his resignation was sent through one Mahesh Mohite but the request was not accepted. On 4th October, 2013 the respondent once again submitted an application to be reinstated but he was formally discharged from service on 3rd October, 2013.

3. It is the case of the petitioner and as submitted by the learned counsel today that after the resignation came to be accepted and the respondent had been relieved from his duties, the petitioner appointed a Peon Mr. Jadhav in his place on or about 17th November, 2013. Mr. Kulkarni relies upon a resolution dated 27th December, 2013 appointing one Mr. Jadhav, copy of which appears at page 28 of this petition. The respondent meanwhile filed a complaint before the Labour Officer and that is how the Reference came to be filed before the Labour Court at the instance of the Deputy Labour Commissioner, Pune. An Award came to be passed on 1st March, 2016 directing the petitioner to reinstate the respondent.

4. The Award is assailed on the ground firstly that the Labour Court had

no jurisdiction to entertain and try the reference since Section 61 of the Maharashtra Village Panchayat Act provides for an appeal to Block Development Officer, in the event, any servant is aggrieved by an order of dismissal. Mr. Kulkarni contended that in view of the alternate remedy under Section 61, there was no occasion for the respondent to approach the Labour Officer which has resulted in the Deputy Commissioner making the Reference under the Industrial Disputes Act. He submitted that despite this objection being taken the Labour Court did not consider the same. The impugned order is silent to the issue of jurisdiction and although three issues were framed, the issue of jurisdiction was not framed and the Court has proceeded to hold that the termination was illegal and that the petitioner had engaged in an unfair labour practices resulting in the order of reinstatement.

5. The next contention taken up by Mr. Kulkarni is that the resignation was voluntary and pursuant to the voluntary resignation the post has already been filled by appointing Mr. Jadhav. Accordingly, there is no occasion for the Labour Court to order reinstatement. He submitted that the Court did not even consider this defence but proceeded to pass the impugned order.
6. At the hearing of this petition today on a query from the Court, Mr.

Kulkarni fairly conceded that the aspect of appointment of Mr. Jadhav was not taken up in the petitioner's written statement, copy of which appears at Exhibit B to the petition. The appointment order is stated to have been issued on 27th December, 2013 whereas the written statement is seen to be declared on 29th April, 2014. It is obvious that the written statement was filed after the purported appointment of Mr. Jadhav. The written statement is, however, silent on this aspect and this issue has been raised for the first time only in this petition. Hence, the impugned order cannot be faulted on this ground.

7. Apropos the second ground of challenge that of an alternate remedy, prima facie, it is seen that the objection to the jurisdiction is not specific on the ground that the alternate remedy exists. Even assuming in favour of the petitioner it appears that, in fact, the respondent had approached the Block Development Officer pursuant to Section 61 as evident from paragraph 8 of the impugned order. The learned counsel for the respondent submitted that on 8th November, 2013 the Block Development Officer rejected an application dated 17th October, 2017 made by the respondent pursuant to the impugned action of the Gramsabha in having accepted the resignation and having relieved the respondent. Thus, it is obvious even the alternate remedy had been availed and it is in these circumstances that the complaint came to be

filed before the Government Labour Officer.

8. In my view, the impugned order cannot be faulted. In the course of submissions, it is seen that the impugned order records the fact that the respondent had led evidence before the Labour Court and it is revealed that the resignation was in fact a forced resignation. Paragraphs 34 and 35 of the impugned order deal with the evidence. It appears that the members of the Gramsabha and the Grampanchayat were all interested parties inasmuch as the respondent had been allotted various duties as directed by his superiors including cleaning the premises, collecting tax and crediting it in the bank, etc. The evidence recorded and as reflected in the impugned order reveals that the respondent was directed to disconnect several illegal water connections and report the same to his seniors. However, in the process of carrying out his duties, it was found that several persons had taken illegal water connections and when the respondent tried to disconnect these connections, he was threatened by several persons who were relatives of members of the Grampanchayat. In the year 2011, it appears that the respondent had prevented one Mr. Shirke from using utensils of the Grampanchayat for personal work, at which time the respondent was manhandled and beaten by the said Shirke who is the very person who had proposed the resolution to discharge the respondent and the Grampanchayat had accepted the resolution. In

this manner, the respondent was completely helpless and faced constant threats from the aforesaid interested persons including Mr. Shirke. It is recorded in paragraph 35 that after released on bail (presumably he was arrested), Mr. Shirke once again threatened and abused the respondent. Thus, the respondent was under constant pressure to submit his resignation and was forced to do so and at the very first opportunity it is seen that he tried to withdraw the resignation but to no avail.

9. It is also pertinent to note that paragraph 36 of the impugned order records that the Grampanchayat made no efforts to lead any evidence in support of its case. Thus, in the face of the evidence led on behalf of the respondent, one would have expected Grampanchayat to lead evidence to rebut the respondent's case but no attempts have been made to do so. In the circumstances, I find no reason to interfere with the impugned order. I therefore pass the following order:-

- (i) Writ Petition is dismissed
- (ii) The petitioner shall pay costs of Rs.20,000/- to the respondent within a period of four weeks from today.

(A.K. MENON,J.)