

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 11984 OF 2016

Ms. Sheela Varma

And Ors

...Petitioners

Versus

The State Of Maharashtra

And Ors

...Respondents

....

Mr.V.P. Vaidya a/w. M.M. Agavekar, Advocate for the Petitioners.

Mr. J.A. Madane, A.G.P. for Respondents No.1 & 2.

Mr. Mahesh A. Shukla, Advocate for Respondent No.3.

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CORAM : R. G. KETKAR, J.

DATE : 07th JUNE, 2017

P.C.

1. Heard Mr.V.P. Vaidya, learned counsel for the petitioners, Mr. J.A. Madane, learned A.G.P. for respondents No.1 and 2-State and Mr.Mahesh Shukla, learned counsel for respondent No.3, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 27.7.2016 passed by respondent No.2, Assistant Labour Commissioner, Mumbai. By that order, respondent No.2 directed the petitioner to adopt appropriate legal proceedings for recovery of her dues and disposed of the application made by petitioner No.1 under Section 33-C(1) of the Industrial Disputes Act, 1947 (for short, 'Act').

3. Rule. Learned Counsel appearing for respective respondents waive service. Having regard to the narrow controversy raised in this Petition and at the request and by consent of parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr.Vaidya submitted that respondent No.2 directed the petitioner to adopt appropriate legal proceedings on the ground that on account of unavoidable circumstances the establishment of the third respondent was closed and respondent No.3 is offering three months salary @ Rs.15,000/- per month. He invited my attention to application made by the first respondent on 17.12.2012 to the Deputy Commissioner of Labour, wherein it is set out that petitioner No.1 was working with the third respondent w.e.f. 1.12.1983 till December, 2012. The owner of the third respondent firm expired on 24.10.2012 and his wife closed down the activity and terminated her services by letter dated 7.11.2012 which amounts to illegal termination. He invited my attention to the termination letter dated 7.11.2012 to contend that it amounts to retrenchment covered by Chapter V-A and accordingly the petitioner is entitled to retrenchment compensation of Rs.2,50,961/-. Respondent

No.2, however, did not go into the merits of the case and simply directed the petitioners to adopt appropriate legal proceedings.

5. On the other hand, Mr. Shukla supported the impugned order. He invited my attention to termination letter dated 7.11.2012 which clearly records that the owner of the third respondent expired on 24.10.2012 and, therefore, the services of petitioner No.1 are not required from 10.12.2012. He submitted that said amounts to closure and not retrenchment as claimed by the petitioners.

6. Mr. Madane also supported the impugned order by submitting that respondent No.2 after trying to arrive at settlement directed the petitioners to adopt appropriate legal proceedings and, therefore, no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the order dated 27.7.2016 shows that respondent No.2 did not record any finding as regards the contentions raised by the parties before him. The impugned order merely records that the meetings were convened for arriving

at a settlement. During the course of settlement proceedings, respondent No.3 offered to pay Rs.45,000/- representing three months salary @ Rs.15,000/- per month to petitioner No.1 and petitioner No.1 did not accept said settlement and, therefore, directed the petitioners to adopt appropriate legal proceedings. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside thereby directing the second respondent to decide the application made by the petitioners at Exhibit-G Pages-18 & 19 to the petition and any other applications made under Section 33-C(1) of the Act in accordance with law. Learned Counsel for the parties agree that they will appear before the second respondent on 19.6.2017 and for that purpose no fresh notice be issued to them. Respondent No.2 shall decide the application/s within three months from the date of appearance of the parties. All contentions of the parties on merits are kept open. Rule is made absolute with no order as to costs. Order accordingly.

8. All parties, including the second respondent, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)