

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****Writ Petition No. 1296 of 2016**

Devidas Rambhau Shinde

Petitioner

versus

Pimpri-ChinchwadMahanagar Palika

Respondent

*Mr. Nitin Kulkarni for the Petitioner.**Mr. Rajesh Patil for the Respondent.***CORAM: S. J. KATHAWALLA, J.****DATE: 8th November, 2017****P.C.:**

1. The above Writ Petition is filed by the Petitioner Devidas R. Shinde, impugning the order passed by the Labour Court at Pune dated 30th July, 2015 in Misc. Application No. 19 of 2008 and for quashing and setting aside the same and for a direction to the Labour Court to decide Reference (IDA) No. 109 of 2000 on merits by restoring the same to file.

2. I have heard the learned Advocates for the parties and have issued Rule. By consent of the parties, through their Advocates, the petition is

taken up for final hearing. The facts which have led to the filing of the present Writ Petition are as follows:

2.1 The Petitioner D.R. Shinde, is an employee of the Respondent Pimpri Chinchwad Mahanagar Palika. The Petitioner was appointed as a Watchman with the Respondent since 1987 and, according to him, he worked for more than 10 years with the Respondent. His services were terminated by the Respondent on 6th November, 1987 for an alleged charge of absenteeism.

2.2 Being aggrieved by the said termination, the Petitioner raised a Reference under the Industrial Disputes Act, 1947, before the Conciliation officer. Since the Respondent remained absent, dispute was referred by the Deputy Commissioner, Pune, to the Labour Court at Pune for adjudication. The Petitioner appeared in the proceedings before the Labour Court at Pune, through his Advocate, and filed his statement of claim, inter alia, contending that his dismissal from the services by the Respondent is illegal and void ab initio. The Petitioner also contended in the statement of claim that an enquiry which was conducted against the Petitioner is not fair and proper and the said enquiry is conducted ex parte without payment of subsistence allowance. It was also contended that the termination of the services of the

Petitioner is illegal for non-compliance of Section 25F of the Industrial Disputes Act and thus he deserves to be reinstated with continuity of service and with full back wages together with all other consequential benefits. Thereafter the Respondent appeared in the proceedings and filed their written statement before the Labour Court, Pune, inter alia, contending that the Reference raised by the Petitioner is not legal and maintainable. The Respondent contended that the Respondent is not an 'industry' under Section 2 (j) of the Industrial Disputes Act and the Respondent is not an employer of the Petitioner. It was further submitted by the Respondent that since the Petitioner remained absent for 313 days, a show cause notice was given to him on 3rd September, 1997 and his services were terminated by holding an enquiry according to the Pune-Chinchwad Mahanagarpalika through Mumbai Mahanagar Palika Rules, 1947 and his services were terminated.

2.3 According to the Petitioner, issues were framed thereafter and the Reference was dismissed in default by an order dated 20th November, 2007. The said award was published in the official gazette on 15th June, 2008. According to the Petitioner, after receipt of the Award by the Petitioner, a

restoration application was filed by him. In the said restoration application, the Petitioner explained that since he was unemployed, his Advocate, considering his financial condition, had told him that the matter was posted for framing of issues and after the issues were framed, and the matter comes up for hearing the Advocate will communicate the date of hearing to the Petitioner when he may remain present. However, unfortunately, the Advocate for the Petitioner did not communicate the date of hearing after framing of issues and therefore the Petitioner could not attend the Court and consequently an order was passed on 20th November, 2007. The Respondent appeared in the proceedings and filed their written statement before the Labour Court at Pune, inter alia, opposing the said restoration application. In the said written statement, it was contended that the Petitioner had not mentioned the name of the Advocate who has not communicated to the Petitioner and thus a false allegation has been made so as to restore the matter without any justified ground and hence the application should be dismissed.

2.4 In order to substantiate the grounds for the restoration application, the Petitioner filed his affidavit (Exh. U-8) and he was cross-examined by the

Respondent. In his cross-examination, the Petitioner has reiterated that his financial condition is weak. He is working as an agricultural labourer and is earning only Rs.70/- per day; that he cannot assign any reason why the name of his earlier Advocate was not mentioned in his affidavit of evidence. However, both the reasons i.e. his financial difficulty and his earlier Advocate not communicating to him are correctly set out by him. He has also refuted the suggestion that he is giving false reasons for not attending Reference (IDA) No. 109 of 2000 or that his deposition is false. The Respondent Corporation filed affidavit of evidence of one Shri Vithal Malhari Bhende wherein he has stated that the Petitioner has blamed his Advocate and has not provided any particulars about his Advocate; the Petitioner has been negligent in pursuing the matter and if the Reference is restored, the Respondent Corporation will have to bear the brunt of back wages. In paragraph 3 of his evidence he stated that the application for restoration is devoid of cogent reasons and merits and thus deserves to be dismissed. Interestingly, in his cross-examination, he has stated that he has no personal knowledge with respect to the contents of the paragraphs in his affidavit of evidence and that his evidence is prepared by his Advocate and

he has only signed the same.

2.5 The Presiding Officer of the Labour Court at Pune has dismissed the restoration application , inter alia, on the ground that the Applicant has not even mentioned the name of the Advocate who represented him in the said Reference; that the issues were framed on 17th July, 2006 and the case was posted for evidence on 14th August, 2006. On 14th August, 2006, the Applicant was present through his Advocate when the case was posted for evidence of the Applicant on several dates when the Advocate for the Applicant was present; that it was the duty of the Advocate to inform the dates to the Applicant; that on 20th November, 2007, the Applicant was absent before the Court, however, his Advocate was present and the Court passed the Award and dismissed the Reference for want of prosecution; therefore, though the Advocate for the Applicant was present before the Court on many occasions, he failed to procure the presence of the Applicant before the Court to lead his evidence; the Applicant has not filed the affidavit of examination-in-chief of the Advocate who was conducting the Reference on his behalf, in the light of his contention made in the application; the Applicant has also not produced any

declaration from the Competent Court of law to show that his Advocate has committed professional misconduct in prosecuting or conducting the said Reference; thus, unless there is any such declaration from the competent court of law, it cannot be said that the Advocate of the Applicant has committed professional misconduct or was negligent in prosecuting the said Reference; the Petitioner has therefore failed to show sufficient cause for not remaining present before the Court when the said case was called out for hearing before the Court.

3. I have heard the learned Advocates appearing for the parties and have perused the order passed by the Labour Court, Pune. In the cross-examination of the Petitioner conducted by the Respondent, it is revealed that he works on the agricultural fields as a labourer and earns only a sum of Rs. 70/- per day; keeping in mind his weak financial condition, his Advocate had told him that he will inform him when he is required to remain present; however no communication was received by him from his Advocate. As against this, no statement of the Advocate for the Petitioner is found recorded in the roznama that the Petitioner is not remaining present despite him being asked to do so. Even if the Advocate had made any such

submission, the Court ought to have asked the Advocate to produce a single letter written to the Applicant calling upon him to remain present before the Court for the purpose of leading his evidence. Even on the day when the Court proceeded to dismiss the Reference for want of prosecution, though the learned Judge has recorded that the Advocate for the Petitioner was present, he has not recorded any statement made by the Advocate with regard to the absence of the Petitioner i.e. whether the Advocate had informed the Petitioner about the date of hearing or whether the Petitioner had remained absent despite his Advocate having informed him the date of hearing. Therefore, the explanation advanced by the Petitioner that keeping in mind his weak financial condition, his Advocate had told him that he will inform him when he is required to remain present in Court, but did not receive any communication from his Advocate to remain present, ought to have been accepted.

4. The learned Judge has in his impugned order recorded that the Petitioner has been represented by an Advocate on several occasions and was so represented even on the day when the Reference was dismissed for want of prosecution. Therefore it is obvious that the name of the Advocate was on

the record/Roznama of the Court. However, the learned Judge erroneously proceeded to hold that the Petitioner has in his restoration application not mentioned the name of his Advocate.

5. In my view, the learned Judge has also erred in rejecting the restoration application on the ground that the Petitioner has not led the evidence of his earlier Advocate and has not produced the declaration from the competent court that his Advocate was negligent or his Advocate has misconducted the proceedings. The Court certainly cannot expect a litigant who is not literate and who is struggling to make his ends meet by working as a labourer on agricultural land to earn a paltry sum of Rs.70/- per day, to summon his erstwhile Advocate before the Court and lead his evidence or to produce a declaration from the competent Court that his Advocate was negligent or his Advocate has misconducted the proceedings, for the purpose of restoration of his proceedings which were dismissed for want of prosecution.

6. The Labour Court has also failed to appreciate that the Respondent Corporation has not only not pointed out/produced any material in support of its contention that the Petitioner has made out a false case in his

restoration application, but the witness of the Respondent Corporation has infact admitted that all the allegations made by him in his affidavit of evidence against the Petitioner are not to his personal knowledge but it is his Advocate who has prepared his affidavit of evidence and he has merely signed the same.

7. In the circumstances, I am of the view that the Petitioner has shown sufficient cause for not remaining present before the Court on the dates fixed for his evidence and the Labour Court ought to have set aside the order dismissing the Reference for want of prosecution and ought to have restored the Reference to file and decide the same on merits. The impugned order therefore needs to be set aside as prayed by the Petitioner.

8. In the premises aforesaid, Rule is made absolute, the Petition is allowed and the order dated 30th July, 2015, dismissing the Reference for want of prosecution is set aside and the Reference (IDA) No. 109 of 2000 is restored to file.

(S.J. KATHAWALLA, J.)