

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1 OF 2008**

Smt. Nandini Mehta, Proprietress

M/s.Lyovak Laboratories

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

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Mr.R.S. Pai a/w A.R.Pai i/by Mr. T.R.Yadav for the petitioner.

Mr.N.M.Ganguli for the respondent no.4.

Ms.Uma Palsudesai, AGP for the State.

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**CORAM : R.D. DHANUKA, J.**

**DATE : 3rd August 2017**

P.C. :

. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks issuance of writ of certiorari inter alia praying for quashing and setting aside the impugned award 13<sup>th</sup> May 2007 made by the Presiding Officer, 1<sup>st</sup> Labour Court, Mumbai and the impugned order dated 28<sup>th</sup> February 2007 passed by the Assistant Commissioner of Labour. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

2. Smt. Shubhangi Kanade was an employee with the petitioner and was issued a charge sheet on 13<sup>th</sup> December 1984. She was removed from service on 26<sup>th</sup> August 1988. A reference bearing (IDA) No.253 of 1989 was filed under Section 10(1) (c) read with Section 12 (5) of the Industrial Disputes Act, 1947 for adjudication of the claim for reinstatement of the said employee before the 1<sup>st</sup> Labour Court at Mumbai with full back wages and continuity of service with effect from 27<sup>th</sup> August 1988.

3. By an order dated 13<sup>th</sup> May 2005, Presiding Officer, 1<sup>st</sup> Labour Court, Mumbai made an award rejecting the claim for reinstatement. Labour Court, however, partly allowed the claim of the respondent for back wages. The petitioner was directed to pay back wages @ 50% of the wages from 27<sup>th</sup> August 1998 to 31<sup>st</sup> December 2003. The petitioner was also directed to pay an amount @ 30% of the wages with effect from 1<sup>st</sup> January 2004 upto the date of retirement on her superannuation by way of compensation instead of reinstatement. It was further directed that the respondent would be further entitled to get legal dues, attended benefits and continuity of service with effect from 27<sup>th</sup> August 1988 till 31<sup>st</sup> December 2003. It is the case of the respondent that since the petitioner did not comply with the award made by the 1<sup>st</sup> Labour Court dated 13<sup>th</sup> May 2005, the respondent filed an application bearing Reference (IDA) No.253 of 1989 under Section 33 C (1) of the Industrial Disputes Act, 1947 before the learned Assistant Commissioner of Labour.

4. The petitioner was served with notices by the Assistant Commissioner of Labour in the said application made by the respondent. Since the petitioner had neither filed any reply to the said application filed under Section 33 C (1) nor appeared before the Assistant Commissioner of Labour, the Assistant Commissioner of Labour passed an order allowing the application made by the respondent after recording reasons and directed the petitioner to pay a sum of Rs.1,94,134/- by way of back wages as per the award dated 13<sup>th</sup> May 2005 i.e. from the date of termination to the date of award.

5. Naib Tahsildar, Recovery of Govt. Dues, Mumbai Suburban District thereafter issued a Certificate for Recovery on 24<sup>th</sup> October 2007 against the petitioner. The petitioner thereafter filed this petition inter alia praying for quashing and setting aside the award dated 13<sup>th</sup> May 2005 and also the impugned order dated 28<sup>th</sup> February 2007 passed by the Assistant Commissioner of Labour under Section 33 C (1) of the Industrial Disputes Act, 1947.

6. Mr.Pai, learned counsel for the petitioner invited my attention to the operative part of the award dated 13<sup>th</sup> May 2005 and would submit that the order allowing the application under Section 33 C (1) filed by the respondent is not in accordance with the award made by the 1<sup>st</sup> Labour Court. He submits that the period considered for payment while allowing the application in the sum of Rs.1,94,134/- itself is ex facie incorrect and contrary to the said award. He submits that though the petitioner was directed to pay the back wages from 27<sup>th</sup> August 1988 to 31<sup>st</sup> December 2003, the Assistant Commissioner of Labour has allowed the claim from 27<sup>th</sup> March 1983 to 28<sup>th</sup> October 2005.

7. Learned counsel for the petitioner produced a Wage Register before this Court to show that the petitioner was paid wages @ Rs.238.50 whereas the respondent by an application filed under Section 33 C (1) has claimed basic claim of Rs.150/- onwards. He submits that her entire claim is seriously disputed by the petitioner. It is submitted by the learned counsel that the petitioner could not remain present before the learned Assistant Commissioner of Labour in view of the fact that the factory of the petitioner was closed. He submits that his

client has no objection if the mother of the deceased employee is allowed to withdraw the amount with accrued interest as already deposited in this Court pursuant to the interim order passed by this Court. Statement is accepted.

8. Learned counsel submits that since the impugned order is passed ex parte and in view of the serious dispute about the calculation made by the respondent in her application under Section 33 C (1), the impugned order passed by the learned Assistant Commissioner of Labour deserves to be set aside and the matter be remanded back to the learned Assistant Commissioner of Labour.

9. Learned counsel for the petitioner, on instructions, states that though the petitioner has impugned the award made by the Labour Court, the petitioner is not pressing that reliefs. Statement is accepted.

10. Mr.Ganguli, learned counsel for the respondent, on the other hand, submits that since the respondent did not appear before the learned Assistant Commissioner of Labour inspite of several notices and in view of the fact that the application made by the respondent under Section 33 C (1) of the Industrial Disputes Act, 1947 was in accordance with the award rendered by the Labour Court, the impugned award passed by the learned Assistant Commissioner of Labour was in accordance with law and no interference is warranted. He submits that the respondent was entitled to claim minimum wages under the Payment of Minimum Wages Act and thus all the claims made by the petitioner in this application under Section 33 C (1) before the Assistant Commissioner of Labour

were rightly granted by the learned Assistant Commissioner of Labour. Mr. Ganguli, learned counsel for the respondent, however, fairly admits that there was no claim for minimum wages before the Labour Court in the reference made before the Labour Court.

11. In view of the fact that the order passed by the Assistant Commissioner of Labour was ex parte and in view of the petitioner remaining absent in view of the factory of the petitioner having been closed, I am inclined to accept the explanation rendered by the learned counsel for the petitioner that the petitioner could not remain present before the Assistant Commissioner of Labour due to unavoidable circumstances.

12. Whether the order passed by the learned Assistant Commissioner of Labour allowing the claim of Rs.1,94,134/- was in accordance with the award made by the Labour Court on 13<sup>th</sup> May 2005 or not, I do not propose to go into that issue. The petitioner deserves to be granted an opportunity to present its case before the learned Assistant Commissioner of Labour. I do not propose to go into the issue whether the said employee could claim the amount as claimed in the said application filed under Section 33 C (1) before the learned Assistant Commissioner of Labour or not. The petitioner would be entitled to oppose the said application filed by the said employee before the learned Assistant Commissioner of Labour by filing an affidavit.

13. I therefore pass the following order :-

- (i) The impugned order dated 28<sup>th</sup> February 2007 passed by the learned Assistant Commissioner of Labour is set aside.

- (ii) Application filed by the said employee under Section 33 C (1) of the Industrial Disputes Act, 1947 is restored to file. The petitioner is permitted to file reply to the said application within four weeks from today.
- (iii) Mother of the said employee Smt.Shubhangi Kanade is permitted to withdraw the amount deposited pursuant to the interim order passed by this Court on 1<sup>st</sup> November 2007 with accrued interest unconditionally.
- (iv) In view of the petitioner not pressing its challenge to the award dated 30<sup>th</sup> May 2005 rendered by the Presiding Officer, 1<sup>st</sup> Labour Court, Mumbai, the validity of the said award is upheld.
- (v) Learned Assistant Commissioner of Labour shall decide the application filed by the said employee under Section 33 C (1) after giving an opportunity to both the parties to represent their case and pass a fresh order within six months from the date of communication of this order.
- (vi) It is made clear that this Court has not expressed any views on the merit of the matter.
- (vii) All contentions raised by the petitioner in this petition and application filed by the said employee before the learned Assistant Commissioner of Labour and before this Court are kept open.
- (viii) Learned Prothonotary and Senior Master is directed to permit the mother of the said deceased employee to withdraw the amount as directed.

(ix) Rule is made absolute in the aforesaid terms.

(x) There shall be no order as to costs.

14. Parties as well as the learned Assistant Commissioner of Labour and the learned Prothonotary and Senior Master to act on the authenticated copy of this order.

***R.D. DHANUKA, J.***