

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTER PATENT APPEAL NO. 125 OF 2012 IN
WRIT PETITION NO. 6474 OF 2011
WITH
CA/1173/2013 AND CA/12416/2012 AND CA/1983/2015

Municipal Council Osmanabad
Through its Chief Officer,
Municipal Council, Osmanabad

.. Appellant
(Ori. Petitioner in W.P.
No. 6474 of 2011)

Versus

1. Hanmant S/o Mahdev Mahadik
Age 47 years, Occu. Labour,
R/o. Osmanabad,
Tq. & Dist. Osmanabad
C/o. C.N. Shinde,
General Secretary, Trade Union Center,
Jalkot Road, Udgir, Dist. Latur

2. Dy. Commissioner of Labour,
Aurangabad Division, Aurangabad

.. Respondents

WITH
LETTER PATENT APPEAL NO. 124 OF 2012 IN
WRIT PETITION NO. 6959 OF 2009
WITH
CA/1251/2013 AND CA/12419/2012 AND CA/1981/2015

Municipal Council Osmanabad
Through its Chief Officer,
Municipal Council, Osmanabad

.. Appellant
(Ori. Petitioner in W.P.
No. 6959 of 2009)

Versus

1. Raju S/o Nagnath Bansode,
Age 33 years, Occu. Labour,
R/o. Osmanabad,

Tq. & Dist. Osmanabad
 C/o. C.N. Shinde,
 General Secretary, Trade Union Center,
 Jalkot Road, Udgir, Dist. Latur

2. Dy. Commissioner of Labour,
 Aurangabad Division, Aurangabad .. Respondents

WITH
 LETTER PATENT APPEAL NO. 126 OF 2012 IN
 WRIT PETITION NO. 6492 OF 2011
 WITH
 CA/1172/2013 AND CA/12417/2012

Municipal Council Osmanabad
 Through its Chief Officer,
 Municipal Council, Osmanabad

.. Appellant
 (Ori. Petitioner in W.P.
 No. 6492 of 2011)

Versus

1. Laxman S/o Tatya Sarwade
 Age 45 years, Occu. Labour,
 R/o. Osmanabad,
 Tq. & Dist. Osmanabad
 C/o. C.N. Shinde,
 General Secretary, Trade Union Center,
 Jalkot Road, Udgir, Dist. Latur

2. Dy. Commissioner of Labour,
 Aurangabad Division, Aurangabad .. Respondents

WITH
 LETTER PATENT APPEAL NO. 127 OF 2012 IN
 WRIT PETITION NO. 6458 OF 2011
 WITH
 CA/1174/2013 AND CA/12421/2012 AND CA/1982/2015

Municipal Council Osmanabad
 Through its Chief Officer,
 Municipal Council, Osmanabad

.. Appellant
 (Ori. Petitioner in W.P.
 No. 6458 of 2011)

Versus

1. Dagdu S/o Udhav Kamble
Age 45 years, Occ. Labour,
R/o. Osmanabad,
Tq. & Dist. Osmanabad
C/o. C.N. Shinde,
General Secretary, Trade Union Center,
Jalkot Road, Udgir, Dist. Latur
2. Dy. Commissioner of Labour,
Aurangabad Division, Aurangabad .. Respondents

WITH
LETTER PATENT APPEAL NO. 129 OF 2012 IN
WRIT PETITION NO. 9187 OF 2010
WITH
CA/1175/2013 AND CA/1980/2015 AND CA/12420/2012

Municipal Council Osmanabad
Through its Chief Officer,
Municipal Council, Osmanabad

.. Appellant
(Ori. Petitioner in W.P.
No. 9187 of 2010)

Versus

1. Dagdu S/o Kashim Shaikh
Age 45 years, Occu. Labour,
R/o. Osmanabad,
Tq. & Dist. Osmanabad
C/o. C.N. Shinde,
General Secretary, Trade Union Center,
Jalkot Road, Udgir, Dist. Latur .. Respondent

WITH
LETTER PATENT APPEAL NO. 133 OF 2012 IN
WRIT PETITION NO. 6456 OF 2011
WITH
CA/1176/2013 AND CA/1984/2015 AND CA/12418/2012

Municipal Council Osmanabad
Through its Chief Officer,
Municipal Council, Osmanabad

.. Appellant
(Ori. Petitioner in W.P.
No. 6456 of 2011)

Versus

1. Phulabai Sahebrao Waghmare
Age 56 years, Occu. Labour,
R/o. Osmanabad,
Tq. & Dist. Osmanabad
C/o. C.N. Shinde,
General Secretary, Trade Union Center,
Jalkot Road, Udgir, Dist. Latur
2. Dy. Commissioner of Labour,
Aurangabad Division, Aurangabad .. Respondents

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Mr. Vivek Deshmukh, Advocate for appellants - Municipal Council
in all Letters Patent Appeals / Civil applications
Mr. Ajay Shinde, Advocate for respondent no.1 in all LPAs

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CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 21-12-2018

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Heard learned counsel for appearing parties finally, by consent.
2. This group of letters patent appeals has been preferred against decision of learned Single Judge dated 23-02-2012 in group of writ petitions bearing no. 6474 of 2011, 6458 of 2011, 6959 of 2009, 6456 of 2011, 9187 of 2010 and 6492 of 2011.

3. Learned counsel for the appellants contends that conciliation proceedings were admitted / failed around 2003-2004 while the demand notices under section 2(A) of the Industrial Disputes Act, 1947 were issued. The termination had taken place long before on 01-11-1997. He further purports to contend that the Hon'ble Single Judge has failed to consider decision in the case of *Alarsin and Alarsin Marketing Employees' Union Vs. Alarsin Pharmaceuticals and Alarsin Marketing Pvt. Ltd. and another* reported in 2004 (3) *Mh.L.J.* 650 and has also failed to consider purport of section 2(A) of the Industrial Dispute Act, 1947.

4. Learned counsel for respondents Mr. Shinde submits, facts in the matter had been appreciated by two *fori* hitherto, on reference by labour court in the first instance and later by this court in writ petitions, wherein it has been observed that conciliation authority had been approached around 21-08-1997 and services of respondents were subsequently terminated by oral orders. Said action had been in clear breach of provisions of section 33(1)(b) of the Industrial Disputes Act, 1947.

5. Learned counsel for appellants though has submitted that the matters had been admitted for conciliation long after termination, it had neither been pleaded before labour court nor

was its such a case in writ petition nor any material had been placed with the *fori* hitherto. A case can seldom be allowed to be improved on in letters patent appeal. The case of *Commissioner of Police Vs. Gordhandas Bhanji* reported in *AIR 1952 SC 16* can be usefully referred to.

6. Apart from that, there appears communication to appellant dated 19-11-1997 about not causing any change in conditions of respondents' employment. There further appears to be communication to appellant that the matters had been admitted to conciliation on 26-08-1997. No explanation has come forth in this respect from appellant. While appellant's written statement before labour court has denied conciliation proceedings, a reverse case is sought to be put about conciliation being subsequent to termination. Such polar stands are incompatible with claims in written statement and the one now being sought to be taken up.

7. Learned Single Judge has also referred to decision of supreme court in the case of *Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. Vs. Shri Ram Gopal Sharma and others* reported in *2002 I CLR 789* and has quoted relevant portion from the same and further observed that admittedly termination of services of respondent – employees is

during pendency of conciliation proceedings and no application for approval as contemplated under section 33(2)(b) proviso of the Industrial Disputes Act, 1947 has been made by appellant – municipal council.

8. Having regard to aforesaid, challenge to decision by Hon'ble learned Single Judge does not appear to be sustainable.

9. Letters patent appeals accordingly are dismissed.

10. In view of dismissal of letters patent appeal, all pending civil applications filed in present letters patent appeals do not survive and stand disposed of.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/