

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1159 OF 2011

Suresh Laxman Gurav

.... Petitioner

Vs.

The President,

Maratha Mandal, Ichalkaranji & Others

.... Respondents

Mr. M.S. Lagu for the Petitioner.

Mr. T.S. Ingale for Respondent No.1.

Mr. S.B. Kalel, AGP, for Respondent Nos.4 & 5.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JULY 04, 2018

P.C:

1. Having heard Mr. Lagu, appearing for the petitioner, and perusing the petition as also the annexures thereto, we cannot accede to his request to issue a writ of mandamus, and particularly to respondent Nos.1 to 3 to pay salary as per the prescribed pay-scale to the petitioner for having extracted work from him but withholding the legitimate dues. On such a petition, in fact what we find is that the

Management/respondent Nos.1 to 3 do not accept this position. They dispute it. They say that the petitioner was serving at an Institution which is a Polytechnic and that Institution/College has since been closed. From the annexures to the petition, it appears that the petitioner had approached the other Forums. The petitioner had filed Civil Writ Petition No.784 of 2004 in this Court. It also appears that there were Consent Terms and taken on record on 27-9-2002 in Civil Writ Petition No.3793 of 2002 to which the petitioner was not a party. In that, there were certain Terms exchanged between the parties. Pursuant to those Terms, the petitioner says that he reported for work but withdrew his complaint pending in the Industrial Court. Thereafter, these Terms have not been honoured by the respondents. The Management disputes this position and says that the Institution is closed and the petitioner was not an employee of the Management/Trust but that of the Polytechnic, namely, Shahu Chatrapati Polytechnic. That having been closed, the petitioner cannot maintain his writ.

2. We find much substance in the contentions of

respondent Nos.1 to 3 as the writ petition involves a clear dispute on facts. Though the petitioner claims that he is working as a Watchman on a permanent and vacant post since 27-10-1998, from the annexures to the petition itself it is apparent that the petitioner had earlier approached the Industrial Court. The petitioner is also relying upon the order passed on 27-9-2002 in Civil Writ Petition No.3793 of 2002 wherein the College, the second respondent to this petition, had agreed to lift the closure but even that order has not come into effect. The petitioner had approached the Industrial Court by filing Complaint (ULP) No.24 of 2003 for the same reliefs. He abandoned that proceedings, in the sense he challenged the non-interference of the respondents by granting him the benefit of Rule 25-A the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and even in that writ petition the Consent Terms arrived at and referred above have not been honoured allegedly.

3. As part and parcel of the Terms, the petitioner withdrew his proceedings before the Industrial Court. Thus, the

petitioner is aware, in the light of the clear dispute on facts, that his remedy was to approach either the Industrial Court on the footing that he is a workman within the meaning of Section 2, Clause (5) and Section 3, Clause (13) of the Industrial Disputes Act, 1947 and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. He was aware that there was a closure effected of the Institution but he claims revival on the strength of the Consent Terms filed in this Court in the two writ petitions. Thus, whether there was at all any revival and if at all there was a revival, whether the petitioner reported for work and for how many days and months would have to be established and proved in the light of the denials of respondent Nos.1 to 3. In the circumstances, it would not be proper to grant any relief. The writ petition is dismissed on the ground that the petitioner has alternate and equally efficacious remedy to seek redressal of his grievance.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)