

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 420/2018

(RURAL WATER SUPPLY REGULAR TEMPORARY EMPLOYEES UNION, Z.P. THR. BHARATSINGH
 PARIHAR & OTHERS **VERSUS** ARUN LAXMAN DUBE)

WITH

CRIMINAL WRIT PETITION NO. 421/2018

(RURAL WATER SUPPLY REGULAR TEMPORARY EMPLOYEES UNION, Z.P. THR. BHARATSINGH
 PARIHAR & OTHERS **VERSUS** SATISHCHANDRA SHRAVAN SUSHIR)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Mr. S.R. Bhongade, counsel for the petitioners.

CORAM : MANISH PITALE, J.
DATE : JUNE 27, 2018.

By these two writ petitions, the petitioners, being the union of regular temporary employees of the Rural Water Supply Department at Bhandara and the employees of the said department, have challenged two orders dated 29.08.2017 passed by the Industrial Court Maharashtra, Bhandara Bench in Criminal (ULP) Appeal Nos.10 of 2014 and 11 of 2014. By identical impugned orders, the said Court at Bhandara has allowed the applications filed by the respondents in writ petitions for placing on record additional documents and additional affidavit in support of their appeals.

The respondents in writ petitions have filed the aforesaid appeals in the Industrial Court, Bhandara challenging order dated 26.06.2014 passed by the Labour Court, Bhandara, whereby the said respondents have been convicted for offences

under Section 48(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and they have been sentenced to suffer simple imprisonment for two months. The said order was passed by the Labour Court, Bhandara in the context of non-compliance of earlier order passed by the Industrial Court in favour of the petitioners herein for payment of arrears of salary and current salary in terms of the recommendations of the 6th Pay Commission.

In the appeals filed before the Industrial Court, the respondents filed applications for placing on record additional affidavits and additional documents demonstrating that the conviction and sentence imposed by the Labour Court was not justified. These applications were opposed by the petitioners herein. But, by the impugned orders, the Industrial Court has allowed the applications on the ground that since the respondents would be facing imprisonment, they deserved opportunity to place on record all facts including subsequent facts.

Mr.S.R. Bhongade, learned counsel appearing on behalf of the petitioners, in support of the writ petitions, has submitted that the respondents failed to point out as to under which provision the said applications were filed for placing on record additional affidavit and additional documents and that the Industrial Court erred in exercising power under Section 391 of the Code of Criminal Procedure (Cr.P.C.) while allowing the applications. Insofar as the order passed by the Industrial Court in Criminal (ULP) Appeal No.11 of 2014 is concerned, an additional objection raised by the learned counsel for the petitioners is that while the respondent in Writ Petition No.421 of 2018 had filed

application before the Industrial Court only for filing additional affidavit but, by the impugned order, the respondent therein has been permitted to file additional documents also. It is the contention of the learned counsel appearing for the petitioners that the respondents have sought to place on record false evidence and false documents in order to justify their failure in complying with the orders passed by the Industrial Court, which had led to their conviction and sentence.

A perusal of the impugned order shows that the Industrial Court has allowed the applications filed by the respondents and permitted them to place on record additional affidavits and additional evidence/documents in order to grant them ample opportunity to place on record all relevant facts, including subsequent facts. The crux of the grievance of the petitioners in the present case is the non-compliance of initial judgment and order dated 17.12.2012 passed by the Industrial Court, whereby the respondents had been directed to make payment to the petitioners as per the recommendations of the 6th Pay Commission. On this basis, the petitioners are entitled to arrears of salary, which they have been deprived of, due to such non-compliance by the respondents, leading to the proceedings before the Labour Court culminating in order dated 26.06.2014, whereby the respondents stood convicted and sentenced in the aforesaid manner.

The respondents have sought to place on record affidavits and evidence/documents to demonstrate that certain payments have been made to the petitioners and that therefore, they cannot be said to be guilty of non-compliance of earlier orders of the Court and that the conviction and sentence imposed by the

Labour Court is not justified. The said affidavits and documents have been filed by the respondents in support of their contentions in the appeals pending before the Industrial Court. In this situation, only because the respondents failed to state the provision under which the said affidavits or documents were sought to be filed, cannot be a ground for rejecting their prayers. To that extent, no fault can be found with the impugned orders passed by the Industrial Court. The observations made by the Industrial Court in the impugned orders that the respondents should be granted ample opportunity to place on record all facts, including subsequent facts since they are facing the order of imprisonment imposed by the trial Court, are also correct. This is because, it must come on record as to whether and to what extent the petitioners have been made payments in terms of the earlier orders passed by the Court and also to verify if at all any payment has been made to them.

But, at the same time it is necessary to address the concern of the petitioners that the affidavits and documents placed on record by the respondents due to permission granted in the impugned orders ought not to be accepted as genuine and as a true depiction of facts. This concern of the petitioners can be taken care of by an appropriate direction to the Industrial Court.

Since the petitioners have been deprived of enjoying the fruits of the order dated 17.12.2012 passed by the Industrial Court in their favour, it would be in the interest of justice that the appeals filed by the respondents are decided expeditiously by the Industrial Court. It is for this reason that the present writ petitions are being disposed of without issuing notices to the respondents.

In view of the above, the Industrial Court is directed to abide by the following directions:-

(a) The appeals filed by the respondents shall be disposed of at the earliest and in any case within a period of three months from today.

(b) The Industrial Court is directed to grant an opportunity to the petitioners herein to object to the genuineness of the documents placed on record on behalf of the respondents and the averments made in their additional affidavits in respect of the said documents.

(c) The Industrial Court shall not accept the said documents as admitted by the petitioners and after giving suitable opportunity to the petitioners to object to the said documents/evidence, the Industrial Court shall proceed in the matter.

(d) While raising objections in the aforesaid manner, the petitioners shall be permitted by the Industrial Court to file additional documents and evidence, if required.

With the above directions, both the writ petitions are disposed of.

JUDGE

APTE