

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5167 OF 1999

Shriram Ganesh Pimpalkhare
Since deceased through his L.R.

A) Mangesh Bal Pimpalkhare
Age 37 years, Occ. Service
Journalist in Dainik Jagaran,
R/o C/o P.N.Nema, LIG 94,
Kotra, Sultanabad, Bhopal-3
(Madhya Pradesh) ..Petitioner

Versus

Chairman, Jalgaon Zilla Postal
Credit Society Limited, Jalgaon
Near Panchamukh Hanuman,
Zilla Peth, Jalgaon. ..Respondent

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Advocate for Petitioner : Shri S.V.Dixit h/f Shri V.J.Dixit
Advocate for Respondent : Shri Vijay Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 07, 2019

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ORAL JUDGMENT:-

1. Learned Advocate for the deceased petitioner submits that he has a copy of a Civil Application dated 25.3.2014 with the affirmation / affidavit before a notary. By the said application, the nephew of the petitioner - Shri Mangesh Bal Pimpalkhare, is sought to be brought on record as the L.R. of the deceased / petitioner, who was issueless and his wife had also expired. He fairly submits that

inadvertently, the original copy of the civil application, which was supposed to be filed in the office of this Court, has been misplaced. He tenders his copy (photostat) on record.

2. In view of the above and by the consent of the parties, the said copy of the civil application is taken on record and marked as Exhibit 'X' for identification. On the request of the learned Advocate and in view of the contents of Exhibit 'X', leave to add the L.R. is granted. L.R. be brought on record forthwith. The learned Advocate appears on his behalf.

3. The petitioner is partly aggrieved by the judgment and order dated 28.9.1997, passed by the Labour Court on Application IDA No.181 of 1993, filed by the petitioner seeking recovery of unpaid money under Section 33-C(2) of the Industrial Disputes Act, 1947.

4. Heard the learned counsel for the respective parties.

5. The petitioner had approached the Labour Court demanding payment of earned wages for the period of his medical leave, D.A., leave encashment, bonus and provident fund. The employer agreed to pay the bonus and difference in D.A. as per Rules. A specific stand was taken by the employer that the petitioner was absent without

leave from 1.2.1990 upto 22.7.1990. Hence, salary was not paid and there was no issue of causing deduction of P.F. contributions.

6. The Labour Court has recorded the consent of the management for making payment of bonus and difference in D.A. On the contentious issues, the Labour Court concluded that the petitioner was not entitled for salary for the period of 5 months and 22 days and consequentially, no P.F. was required to be contributed. The petitioner failed to establish a right towards earned leave.

7. I have perused the record in the light of the submissions of the learned Advocates. The following factors emerging from the record are decisive:-

(a) The petitioner had filed an application for seeking medical leave, which is admitted by the employer.

(b) He did not verify as to whether his leave on medical grounds from 1.2.1990 till 22.7.1990, was sanctioned or not.

(c) Though the management has produced a communication Exhibit C-9 rejecting the leave application of the petitioner, there was no evidence that the said

communication was served upon the petitioner.

(d) There was no evidence that the letter dated 16.9.1991 at Exhibit C-5, rejecting the leave application, was served upon the petitioner.

(e) The necessary record was not produced before the Labour Court to consider, whether the petitioner had any leave in balance, so as to calculate leave encashment amount.

8. As such, in so far as the grant of medical leave is concerned, the management admitted that the petitioner had submitted a leave application seeking medical leave for the period 1.2.1990 upto 22.7.1990. In my view no employee can proceed on leave without filing an application seeking leave from the employer. So also, no employee can proceed on leave presuming that his leave application was likely to be allowed. Once an employee files an application seeking leave, he has to follow up with the management and seek orders on such an application. So also, once the management had received an application for leave, as is admitted in this case, it was the duty of the management to announce its decision on such application before the date, mentioned by the applicant, of the beginning of his medical leave.

9. Exhibit C-9, which is said to be the order rejecting the leave application of the petitioner, was produced before the Labour Court. However, there was no evidence that the management had served this letter upon the petitioner before he proceeded on leave. If such rejection would have been communicated to the employee, before the beginning of his leave period, and the employee had proceeded on leave, it would have been construed as being an act of unauthorized absenteeism. The employee then would not have been entitled for any wages, inasmuch as, he would have been liable for disciplinary action.

10. Considering the peculiar facts as recorded above, it is apparent that both the sides have committed errors. In the face of the management admitting that a leave application was tendered by the petitioner, the burden was on the management to pass an order and convey to the employee, in advance, as to whether his application for leave was sanctioned or not.

11. As I find that both the parties have committed errors and since it would not be appropriate for remanding the matter to the Labour Court, after a period of about 29 years, I deem it appropriate to pass an order, which would balance the equities.

12. Learned Advocate for the petitioner submits that an approximate amount of Rs.15,000/- was payable towards his medical leave period. It is possible that if the management would have conveyed the rejection of the leave application of the petitioner, he would have refrained from proceeding on leave. Hence, in this backdrop, an amount of RS.7,500/- as 50% wages for the medical leave period, can be granted, keeping in view, the length of the litigation and the fact that the petitioner has now taken a voluntary retirement.

13. In so far as the leave encashment is concerned, the Labour Court was handicapped from calculating such encashment, since the record was not produced by the management. Had the petitioner issued a notice for production of the documents, the Labour Court would have directed the management to produce the said record. In the absence of any such notice, obviously, there was no occasion for the Labour Court to issue a direction to the management for producing the leave record. The principle of '*onus probandi*' would lie on the shoulders of the claimant and if the claimant did not have the record and if such record was in the custody of the employer, a notice for production should have been filed by the claimant. In this backdrop, I am unable to accept the contention of the petitioner.

14. As such, this petition is partly allowed. The impugned direction issued by the Labour Court, rejecting the claim of wages for the leave period would stand modified and the respondent / management is directed to pay an amount of Rs.7,500/- only to the petitioner as 50% wages for the medical leave period, by depositing the said amount on/or before 20.6.2019 in this Court. The L.R. of the petitioner would then withdraw the said amount by following the due procedure, without any conditions.

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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