

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3257 OF 2019
(The Chief Executive Officer, Z.P.Latur Vs. Satyaprem s/o Manikrao
Pawar)

Mr.U.B.Bondar, Advocate for the petitioner.
Mr.H.V.Patil, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 06/07/2019

PER COURT :

1. This Court had passed an order on 06/03/2019, which reads as under :-

- “1. Issue notice to the respondent, returnable on 3rd April, 2019.*
- 2. Till the returnable date, there shall be ad interim relief in terms of prayer clause “D” on the condition that the petitioner shall deposit a sum of Rs.10,000/- in the Labour Court, within a period of two weeks from today.*
- 3. In addition to court process, petitioner to serve the respondent privately by any legally admissible mode and to file an affidavit with tangible proof of actual service. In case of failure to serve the respondent privately and file service affidavit stating that the respondent is are served or not, at least two days before the returnable date and to deposit the amount as aforesaid within the stipulated time, the ad interim relief would cease to operate.”*

2. Learned Advocate for the petitioner/Zilla Parishad informs that the amount of Rs.10,000/- has been deposited before the Labour Court.

3. I have heard the strenuous submissions of the learned Advocates for the respective sides. The respondent/original complainant before the Labour Court prays for the dismissal of this petition with heavy costs.

4. I find from the record that the Labour Court, while dealing with Complaint (ULP) No.65/2010 filed by the respondent challenging his dismissal from service, passed an order of closing the evidence of the Zilla Parishad as the petitioner did not lead evidence for some time. After the order was passed on 10/04/2017, the Zilla Parishad approached the Industrial Court vide Revision (ULP) No.25/2017. The said revision petition was allowed subject to costs of Rs.2,500/- by judgment dated 17/02/2018. The petitioner failed to deposit the said costs and though it's witness was part cross-examined, he did not remain present. Hence the order dated 10/04/2017 was restored. The petitioner then preferred Revision (ULP) No.12/2018, which has been dismissed by the Industrial Court, Latur vide the impugned judgment.

5. I do find that the conduct of the Zilla Parishad before the Labour Court, Latur appears to be quite gross. Despite opportunities, the witness of the Zilla Parishad failed to remain present for further cross examination and the costs of Rs.2,500/- was also not deposited. Ordinarily, such a conduct deserves condemnation. However, the learned Advocate for the Zilla Parishad strenuously submits that the original complainant has been charged with a grave mis-conduct and he is not a workman u/s 2(s) of the Industrial Disputes Act, 1947 and is not an employee u/s 3(5) of the MRTU and PULP Act, 1971. His complaint is not maintainable before the Labour Court. If evidence by the Zilla Parishad is not adduced, he would practically get a walk over and he would succeed before the Labour Court without any contest. He further submits that this Court has already imposed costs of Rs.10,000/-.

6. I find that there is merit in the submissions of the learned Advocate for the petitioner keeping in view that on the one hand, the issue as to whether the complainant is a workman or not, will have to be contested and on the other hand, whether the complainant has indulged in any serious mis-conduct will also have to be scrutinized by the Labour Court. The absence of the Zilla Parishad or no

evidence on the part of the Zilla Parishad is likely to prove fatal.

7. In view of the above, this petition is allowed. The impugned judgment of the Industrial Court dated 15/01/2019 is quashed and set aside. Consequentially, the order dated 10/04/2017 passed by the Labour Court below Exh.22 is also quashed and set aside. Revision (ULP) no.12/2018 is allowed.

8. In addition to the amount of Rs.10,000/- deposited by the petitioner before the Labour Court, the petitioner shall deposit a further amount of Rs.5,000/- on or before 02/08/2019 before the Labour Court and on the compliance of this condition, the petitioner would be allowed to lead it's oral evidence. The original complainant is at liberty to withdraw the total amount of Rs.15,000/- as costs, without conditions.

9. The part cross examined witness of the petitioner namely Mr.Sanjay Tubakale, Dy.C.E.O. (Panchayat), shall remain present at 11.00 a.m. before the Labour Court at Latur on 02/08/2019 for being further cross examined. If he remains absent, the Labour Court shall discard his evidence and the part cross examination shall not be read in evidence. So also, the Zilla Parishad would be at

liberty to initiate strict disciplinary action against such witness.

10. Since the complaint before the Labour Court is of 2010, all the litigating sides shall extend their fullest co-operation and the Labour Court shall decide the said complaint on it's own merits, on or before 31/01/2020.

(Ravindra V.Ghuge, J.)