

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7958 OF 2017

01 The Managing Director,
The Maharashtra State
Co-operative Cotton Growers
Marketing Federation Ltd.;

02 The Managing Director,
The Maharashtra State Oilseeds,
Commerce & Industrial
Corporation Ltd.,;

Both at Ketan Bhavan,
6th Floor, J.A. Tata Road,
Churchgate, Mumbai.

03 The Factory Manager,
MOCICOL, Division Office,
Hingoli.

Petitioners

Versus

Kisan s/o Sakharam Shete,
age: 66 years, Occ: Nil,
R/o Behind Hyderabad Bank,
Hingoli.

Respondent

Mr.S.T.Shelke, advocate for the petitioners.
Mr.A.S.Deshpande, advocate for the Respondent.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 26th August, 2019

ORAL JUDGMENT:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the learned Counsel for the respective

parties.

2 The petitioners are aggrieved by the judgment and order dated 17.02.2017, delivered by the Industrial Court, Jalna, by which, Complaint (ULP) No.48 of 2013 has been allowed and the petitioners have been directed to pay the unpaid amount of Rs.1,64,048/- to the Respondent-original complainant. Though this Court has not granted any interim relief to the petitioners, it is informed that the Respondent-original complainant has not been paid the said amount along with interest @ 6% p.a. from March 2013.

3 The learned advocate for the petitioners has strenuously criticised the impugned judgment. He draws my attention to the seven grounds formulated in the memo of this petition. I have considered the record available with the assistance of the learned advocates for the respective sides.

4 The only issue raised in this litigation is, as to whether the petitioners could retire the Respondent-workmen at the age of 58 years considering it to be the age of superannuation or whether he would be entitled to work up to attaining the age of 60 years.

5 This issue was preceded with a controversy as regards the date of birth of the workman. The service book, prepared when he entered the service with the petitioners, mentions the date of birth as being 06.10.1953. Later on, there was an issue about the said date of birth and the workman was summoned to Bombay for a meeting with the General Manager and Special Executive Officer of the petitioners. It is stated that the petitioner gave a voluntary declaration that his date of birth is 06.10.1950 and he would retire on 01.10.2008 at the age of 58 years. The said declaration is reproduced by the Industrial Court under paragraph no.14 of the impugned judgment.

6 The issue, therefore, is settled that the workman has proceeded on the premise that his date of birth is 06.10.1950. However, he was relieved from employment on 01.10.2008 for the reason that the petitioners took a policy decision on 23.04.2007 that the retirement age is reduced from 60 years to 58 years and this workman was, therefore, covered by the said change in the retirement age. The Industrial Court has concluded that the workman cannot be superannuated at the age of 58 years.

7 I do not find that the Industrial Court has committed any error for the reason that a change in the age of retirement can be made applicable retrospectively only if it is beneficial to the in-service candidates. If there is any reduction in the age of retirement, such a newly introduced rule has to be made applicable prospectively unless the worker or the Union representing the workers, consents to such a change. The issue of notice of change under Section 9-A of the Industrial Disputes Act would also be a hurdle for making such a rule applicable retrospectively to the in-service candidates. In my view, the Industrial Court has rightly concluded that the workman had the right to continue up to the age of 60 years (September 2010).

8 In the above backdrop, the Industrial Court has calculated the unpaid legal dues of the workman for an amount of Rs.1,64,048/-. The learned advocate for the petitioners points out that the Respondent-workman was before the Controlling Authority, *Ex-Officio* Labour Court, under the Payment of Gratuity Act in Application PGA No.8 of 2014. He was paid an amount of Rs.Two lakhs as a comprehensive package for settling his claim. It is, however, conceded that there was no written agreement except the purshis filed by the workman on 27.03.2015 in the Gratuity Act

proceedings acknowledging that he has received Rs.Two lakhs, that no more dues are payable and the Gratuity case could be disposed off. I do not find that the said purshis could be over read so as to include all the claims of the workman, whether raised or not raised, at the relevant time, and be covered by the said payment. The said payment towards Gratuity proceedings will have to be restricted only to the extent of the said proceedings.

9 In view of the above, the Industrial Court has concluded that the workman was not paid his wages for about 17 months. Considering his salary and certain unpaid amounts, he would be entitled only for Rs.1,64,048/- as against his claim of Rs.2,50,414/-. The Complaint was, therefore, partly allowed. The workman-original complainant has not challenged the said judgment in this Court.

10 In view of the above, this petition, being devoid of merit is, therefore, dismissed. Needless to state, as the petitioners have not deposited the amount of Rs.1,64,048/-, in this Court, during the pendency of this petition, they would be liable to pay interest, as is granted by the Industrial Court, @ 6% p.a. from 19.03.2013 till the amount is actually paid.

11 Considering the request of the petitioners, the petitioners are directed to deposit the said amount in this Court on or before 05th October, 2019 along with the interest component. If the amount is deposited, the Respondent-workman would be at liberty to withdraw the said amount by tendering an application under due identification of the learned advocate along with his recent photograph, recent address proof and a copy of his Aadhar Card or Election Commission Voter's ID card.

12 Rule is discharged.

13 Record & Proceedings to be returned forthwith.

RAVINDRA V. GHUGE
JUDGE

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