

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10911 OF 2019

SWAPNA POOJA SHIKSHAN SANSTHA & ANR
VERSUS
KADUBAI RAMKRUSHNA NAGARE

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Advocate for Petitioners : Shri Bora Satyajit S.
Advocate for Respondent : Shri Khandelwal Rajesh K.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 05, 2019

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PER COURT :-

1. The petitioner / management is aggrieved by the judgment and award dated 1.12.2012, delivered by the Labour Court in Reference IDA No. 386 of 2008, by which, the oral termination of the respondent on 16.4.2007 has been set aside and she is granted reinstatement with continuity and full backwages.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the affidavit in reply filed by the respondent / original second party / workman.

3. The relevant factors are as under:-

(a) The petitioner / management had issued an

appointment order (undated), engaging her as an Assistant Cook at the Ellora Ashram Shala for one year from 20.6.2005 to 19.6.2006, on temporary basis.

(b) A second appointment order (undated) is said to be issued on the same terms for the year 3.7.2006 to 2.7.2007, but as a Helper. This appointment order is denied by the management.

(c) The respondent was orally removed from service on 16.4.2007.

(d) The respondent raised an industrial dispute, which was referred to the Labour Court as Reference (IDA) No.386 of 2008.

(e) The petitioners did not appear before the Labour Court despite service of Court notice.

(f) By the impugned award dated 1.12.2012, the relief of reinstatement with continuity and full backwages was granted.

(g) The award was published on 23.4.2013 and Misc. Application No. 3 of 2014 praying for setting aside the ex-parte award was filed by the management.

(h) No steps were taken by the management and hence the application was rejected on 23.3.2015.

(i) The respondent contends that the notification issued by the Deputy Commissioner (Labour) is dated 28.12.2012 and

the award is deemed to be published. This statement is contradicted by the petitioner by placing reliance upon Dnyaneshwar Anantrao Kulkarni Vs. The Superintendent Engineer, PWD and Others [2015 III CLR 81], wherein, this Court has held that the Deputy Commissioner does not have the authority to publish an award and it is only the Court, which has delivered the award, that can publish it on its notice board after receiving intimation from the appropriate Government that the award is accepted..

(j) The respondent filed Application (IDA) No.23 of 2015 for seeking recovery of legal dues and by the impugned judgment, dated 23.7.2018, the respondent is granted an amount of Rs.10,93,354/-.

(k) The respondent has preferred an application under Section 33C(1) of the Industrial Disputes Act, 1947 for obtaining revenue recovery certificate from the Deputy Commissioner.

(l) Application (IDA) No.11 of 2019 is filed before the Labour Court at Aurangabad for recovery of unpaid wages post the impugned ex-parte award.

4. I find that the petitioners are certainly guilty of negligence and laxity in not appearing before the Labour Court. At the same time, the award impugned is based on the non-appearance of the management and as there was no denial of the claim of the respondent, that the Labour Court has allowed the reference. The

fact that the respondent was engaged initially as an Assistant Cook temporarily and then as a Helper temporarily, have been ignored by the Labour Court.

5. In view of the above, I called upon the learned Advocate for the petitioners to take instructions as to whether the petitioners are willing to pay costs of Rs.1,00,000/- to the respondent for seeking a remand of the proceedings in view of the judgment delivered by this Court in the matter of Divisonal Manager, Food Corporation of India Vs. Balasaheb Ambadas Gund - Writ Petition No.5342 of 2015, dated 29.10.2015.

6. The learned Advocate for the petitioners submits, on instructions, that Rs.1,00,000/- would be deposited before the Labour Court on/or before 30.9.2019 as costs, which can be withdrawn by the respondent without conditions and the petitioners would participate in the Reference Case as per the directions and conditions imposed by this Court.

7. The learned Advocate for the respondent submits, on instructions, received from the respondent present in the Court that she would withdraw the said amount as costs and that amount shall not be adjusted against any legal dues, if she succeeds before the

labour Court.

8. In view of the above, this petition is partly allowed. The impugned award dated 1.12.2012 stands quashed and set aside and consequentially, the impugned order of the Labour Court dated 23.7.2018 granting Rs.10,93,354/- to the respondent stands set aside. Reference (IDA) No.386 of 2008 stands restored to the file of the Labour Court, Aurangabad on the following conditions:-

(A) All the parties would appear before the Labour Court on 30.9.2019.

(B) The petitioners shall deposit an amount of Rs.1,00,000/- (Rs. One Lakh only/-) before the Labour Court on the same date.

(C) The respondent shall withdraw the said amount without conditions under proper identification and by tendering a recent photograph, copy of the latest permanent address and a copy of the Election Commission Voter Id card.

(D) There shall be no extension of time to deposit the money and failure to deposit the same would lead to the recalling of this order and the restoration of the award dated 1.12.2012 and the impugned order dated 23.7.2018.

(E) The petitioners shall file their written statement

before the Labour Court on/or before 5.10.2019.

(F) On the request of the second party / workman made before this Court, her affidavit in lieu of examination-in-chief already filed, shall stand discarded. She would be at liberty to file a fresh affidavit in lieu of examination-in-chief on such date as is granted by the Labour Court.

(G) The respondent / second party workman shall, thereafter, remain present for her cross-examination on a date appointed by the Labour Court and the management shall cross-examine the second party.

(H) After the second party closes her evidence, the management shall lead their evidence.

(I) The above stages shall be completed by the litigating sides on/or before 29.2.2020 and the Labour Court shall decide Reference (IDA) No.386 of 2008 on its own merits, on/or before 30.4.2020.

(RAVINDRA V. GHUGE, J.)

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