

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13243 OF 2018

NAGAR PANCHAYAT KARJAT THROUGH ITS CHIEF OFFICER
VERSUS
ABASAHEB KASHINATH DHANDE AND ANOTHER

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Advocate for the Petitioner : Shri A. V. Patil and
Shri V. P. Golewar

Advocate for Respondent No. 1 : Shri P. V. Barde
AGP for Respondent No. 2 : Shri S. W. Munde

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th APRIL, 2019.

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PER COURT :

1. On 04/02/2019 after the submissions of the learned Advocate for the petitioner Nagar Panchayat were considered, I had passed the following order :-

"1 The Petitioner is the Nagar Panchayat, Karjat, who has filed this petition through the Chief Officer challenging the judgment and award dated 13.01.2015 delivered by the Labour Court in Reference (IDA) No.1/2014. So also, the Judgment of the Industrial Court dated 23.03.2016 delivered ex-parte in Complaint (ULP) No. 80/2015 is also sought to be challenged.

2 The contention is that the Gram Panchayat became Nagar Panchayat sometime in 2015 and was not aware

about the IDA proceedings before the Labour Court.

3 I find that the Labour Court dealt with the reference proceedings when the Petitioner was the Gram Panchayat. The award indicates that the Gram Panchayat was served and it chose to remain absent. There is no dispute that the award was delivered on 13.01.2015 when the Gram Panchayat was in existence.

4 Insofar as Complaint (ULP) No.80/2015 is concerned, the Petitioners were arrayed as Respondent Nos.1 and 2. The court notice was served upon them. In paragraph 4 of the impugned order, the Industrial Court has recorded that these Petitioners chose to remain absent. It is informed that Criminal ULP Complaint No.1/2016 has been filed and the Chief Officer is arrayed as the accused/respondent before the Labour Court.

5 Prima facie, I find that the Gram Panchayat had not participated in the proceedings before the Labour Court. After it got converted into the Nagar Panchayat, the judgment and award delivered by the Labour Court dated 13.01.2015 would squarely be applicable to these Petitioners. Even the complaint preferred by the original second party workman before the Industrial Court indicates that this petitioner was the respondent and did not appear in the matter.

6 The only issue that can now be looked into is as to whether, the Petitioner had a justifiable cause in not appearing before the Industrial Court when admittedly the Petitioner was a party to the ULP complaint.

7 *Issue notice to the Respondents returnable on*
15.03.2019.

8 *Prima facie, I do not find any ground to grant any ad-*
interim protection to this petitioner. Needless to state, the
Chief Officer shall appear before the Labour Court in the
Criminal ULP complaint and may move an application for
seeking exemption."

2. After this matter was heard for quite some time on
29/03/2019, the learned Advocate for respondent No.1 worker
had suggested a proposal which would put an end to the
litigation. The same was considered and noted in the order of
the Court dated 29/03/2019 which reads as under :-

"1. *This matter is heard extensively today pursuant to the*
speaking order dated 04/02/2019. Considering the factors
emerging from the record, the conduct of the petitioner in
avoiding participation in litigation is evident and obvious.
Only after the original second party workman initiated a
criminal ULP Complaint under Section 48(1) of the MRTU
and PULP Act, 1971, that the petitioner decided to belatedly
react to the judgments and awards delivered against the
petitioner.

2. *In this backdrop, remand of the proceedings so as to*
give the petitioner an opportunity to take a stand that the
respondent was a daily wager and they do not have any

records of his past 16 years service from 1994 to 2010, would be counter productive and would be to the detriment of the worker. The stand that the petitioner would take is that the record is not available because the worker never regularly worked. This can't be the reason for a remand.

3. In the above backdrop, Mr. Barde, learned Advocate for respondent No.1 worker makes the following proposal :-

[a] He would waive the back wages from the date of the publication of the judgment and award of the Labour Court, on 28/05/2015 till 01/06/2016.

[b] From 01/06/2016 till today, his unpaid wages as per the minimum rates of wages, would be about Rs. 2,70,000/-. He might as well give up Rs. 20,000/- and pray for Rs. 2,50,000/-.

[c] He be reinstated in service with continuity on the minimum rates of wages payable today to a Pump Operator, today.

[d] Having put in about 25 years of service in the eyes of Law, his proposal for regularization can be sent to the Director of Municipal Administration for consideration.

4. Learned Advocate for the petitioner seeks time upto 2 weeks.

5. Since this matter is substantially heard and I have practically expressed my view in the order dated

04/02/2019 and this order, the petition be listed for "passing orders" on 12/04/2019."

3. The learned Advocate for the worker today submits that he is willing to further reduce the quantum of back wages to Rs. 2,00,000/-.

4. I have considered the submissions of the learned Advocate for the petitioner and respondent No.1 and the learned AGP on behalf of respondent No.2.

5. It is common knowledge that state instrumentalities and even in private sector employment, the employers maintain minimum records regarding the daily wage workers and at the first available opportunity, such records are destroyed. After a few years, when the matter comes up before any court of law, the defence taken by such employers is that there are no documents available, that if the onus and burden would lie on the daily wager to prove that he has worked continuously for 240 days in a calender year and if such evidence is not available, his claim be rejected.

6. The case in hand is one such example wherein the Grampanchayat did not participate in the proceedings before the Labour Court in Reference (IDA) No. 01/2014. Despite having been served with Court notice and despite having been served with the notice as regards the conciliation proceedings before the appropriate government under the Industrial Disputes Act, there has been no participation by the petitioner establishment. This eventually led to the judgment and award dated 13/01/2015, by which, the reference was allowed and the workman was granted reinstatement with continuity of service from 01/04/2011. He was denied back wages.

7. The Labour Court published the award in view of the provisions of the Industrial Disputes Act, on 28/05/2015 and a copy of the award was forwarded to both the litigating sides. The petitioner has taken a false stand that the Grampanchayat became a Nagar Panchayat in 2015 and was not aware about the proceedings before the Labour Court under the Industrial Disputes Act. The Administrator, who was the Tahsildar of the Nagar Panchayat, informed the Project Officer of the Office of the District Collector by Communication dated 28/05/2015

that the Labour Court has delivered an award. This would expose the false stand taken by the petitioner Nagar Panchayat that it was not aware about the said proceedings or the award. The Administrator of the Nagar Panchayat also informed the Principal Secretary, Municipal Administration that the award of the Labour Court has been delivered.

8. The workman then preferred complaint (ULP) No. 80/2015 before the Industrial Court at Ahmednagar in which the petitioner as well as the Principal Secretary, Municipal Administration, Mumbai, were arrayed as respondents, in which he sought the execution of the award of the Labour Court. The court notice was served upon both these respondents, who did not choose to cause an appearance either through an advocate or in any permissible manner. The matter was lingering for almost a year and finally by the impugned judgment dated 23/03/2016, the Industrial Court allowed the complaint and by declaring that the petitioner is guilty of Unfair Labour Practices, directed the implementation of the judgment and award of the Labour Court.

9. Though the said judgment of the Industrial Court was delivered on 23/03/2016, the petitioner has preferred this petition on 24/09/2018. It is vehemently argued that the petitioner does not have any record about the employment of the respondent worker, the petitioner was not aware about the litigation before the Labour Court and that the respondent worker was a daily wager and who had worked intermittently.

10. It is, therefore, obvious that the petitioner is seeking a remand of the matter for a fresh trial before the Labour Court since it claims that it does not have any record to indicate the employment of the worker on daily wages. Needless to state, the petitioner seeks a remand so that it can establish before the Labour Court that there are no records available and in the absence of the record, the employee cannot be said to have completed continuous employment under Section 25B of the Industrial Disputes Act. If a remand would be utilized by an employer, to cause prejudice to the worker and to defeat his claim under the spacious plea that records are not available, it would result in a miscarriage of justice.

11. Even on the merits of the award of the Labour Court, it is quite clear that the worker was working on daily wages from 1994 till 01/04/2011. In this backdrop, there is no purpose in remanding the matter since the petitioner intends to mis-utilize the said opportunity by stating that it has no record to demonstrate the continuous service of the workman and his claim, therefore, be rejected. In this situation, I find that the proposal put forth by the respondent worker would be an appropriate method of bringing this litigation to an end and more so when I find that this petition filed by the Nagar Panchayat is devoid of merit.

12. As such, this petition is disposed off and by recording the statement of the employee, the following order would substitute the conclusions of the Labour Court and the Industrial Court :-

(a) The petitioner shall reinstate respondent No.1 employee on 30/04/2019 at 11.00 a.m.

(b) *Insofar* as his unpaid wages from the date of the award till the date of the judgment of the Industrial Court are concerned, the petitioner shall pay the said employee

a quantified compensation package towards his back wages from 01/06/2016 till 30/04/2019, for an amount of Rs. 2,00,000/- in four equated monthly instalments.

(c) The first instalment of Rs. 50,000/- shall be paid on 31/05/2019 and the remaining three monthly instalments of Rs. 50,000/- each shall be paid on 29/06/2019, 31/07/2019 and 31/08/2019.

(d) He shall perform his duties as a Pump Operator and shall draw the minimum rates of wages as payable to a comparable operator, in order to grant parity amongst the petitioner and comparable workman.

(e) The petitioner shall forward the proposal of the said employee and all other similarly situated daily wagers, who are comparable to each other, to the Director of Municipal Administration for considering the regularization of such daily wagers including the respondent herein, depending upon their seniority, nature of work performed, etc.

(f) The Director of Municipal Administration shall deal with the said proposal and depending upon the vacancies, it would implement the above directions and consider the

cases of such persons for regularization.

(g) After respondent No.1 employee is reinstated on 30/04/2019, the Labour Court would adjourn Criminal (ULP) No. 1/2016 and the matter would be kept in abeyance till the last instalment of the back wages is paid on or before 31/08/2019. Whenever the last instalment is paid by the petitioner, even by preponing the date of instalment, the said employee would be duty bound to immediately withdraw the ULP complaint from the Labour Court. However, in case of any single default in payment, the employee would be at liberty to proceed with the Criminal (ULP).

(RAVINDRA V. GHUGE, J.)

shp/-