

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3767 OF 2017

Ahmednagar Mahanagar Palika
Ahmednagar
Through its Commissioner

Petitioner

Versus

Rajendra Bandu Suryanarayan
age 55 years, occ. Agril & Business
R/o Renukanagar, Bolhegaon
Tq. & Dist. Ahmednagar.

Respondent

WITH
WRIT PETITION NO. 6011 OF 2019

Ahmednagar Mahanagar Palika
Ahmednagar
Through its Commissioner

Petitioner

Versus

Rajendra Bandu Suryanarayan
age 55 years, occ. Agril & Business
R/o Renukanagar, Bolhegaon
Tq. & Dist. Ahmednagar.

Respondent

Mr. V.S. Bedre, Advocate for the petitioner.
Mr. P.V. Barde, Advocate for the respondent.

CORAM : Ravindra V.Ghuge, J.

DATE : 26th November, 2019.

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally

with the consent of the learned advocates for the respective parties.

2. The petitioner, in both these petitions, is the same, Ahmednagar Municipal Corporation. In the first petition, filed on 15.11.2016, the Corporation is aggrieved by the judgment and award dated 26.07.2016, delivered by the Labour Court, Ahmednagar, in Reference (IDA) No. 24/2010 by which, the order of termination dated 01.08.1997 was quashed and set aside being illegal and the second party-workman, respondent herein, was granted reinstatement with continuity without back wages.

3. In the second petition, the petitioner is aggrieved by the interlocutory order passed by the Industrial Court, Ahmednagar, dated 16.07.2018, vide which, the application Exhibit U-2, filed by the original second party-workman in Complaint (ULP) No.17 of 2018, seeking interim relief in the nature of implementing the award dated 26.07.2016 (impugned in the first petition), has been allowed.

4. I have considered the strenuous submissions of the learned Advocates for the respective sides.

5. The learned Advocate for the Corporation submits that the petitioner had terminated the respondent on account of charges of misappropriation. Though he had worked from 1989 and was terminated on 01.08.1997, the Corporation had to take the said step since it had received information that the respondent was indulging in misappropriation. It is further canvassed that though the termination is dated 01.08.1997, an Industrial Dispute was raised in the year 2009 and was referred to the Labour Court by way of a Reference under Sections 10 and 12 of the Industrial Disputes Act, 1947, on 08.03.2010. As the workman had caused a delay of twelve years, he was disentitled from raising any grievance against his termination, notwithstanding whether the termination was legal or illegal.

6. He further submits that the Corporation had filed a written statement Exhibit-C-3 denying the allegations made by the workman. The issue of a stale dispute was raised. The Gram Panchayat Bolhegaon later on merged with the Nagar Parishad Ahmednagar and subsequently, by Government Resolution dated 30.06.2003, Nagar Parishad Ahmednagar was converted into Municipal Corporation. It was, therefore, canvassed that a stale

dispute would actually amount to there being no existence of an Industrial Dispute.

7. The learned Advocate for the workman submits that after the workman joined as a Recovery Clerk pursuant to his selection, he was granted permanency on 15.11.1991 after successful completion of his probation period. On 01.08.1997, he was awarded a stigmatic termination. He raised a demand notice in an Industrial Dispute on 01.06.2008 and the matter was referred to the Labour Court.

8. He submits that initially, the Reference was answered in the negative by award dated 13.11.2013. He carried the matter in Writ Petition No.1652 of 2014. By the order of this Court dated 29.07.2015, the impugned award was set aside and the Reference was restored for a fresh decision. He succeeded vide judgment and award dated 26.07.2016. As the award was not implemented, he filed Complaint (ULP) No.17 of 2018 seeking its implementation. After he succeeded in getting interim relief, the Corporation has preferred a second writ petition. The workman has also filed Criminal Complaint (ULP) No.23 of 2018 under Section 48(1) of the M.R.T.U. & P.U.L.P. Act, 1971, which is akin to the Contempt of Courts proceedings before

the Labour Court. He had to litigate in six different proceedings against this petitioner.

9. I have considered the reasons assigned by the Labour Court on the basis of the oral and documentary evidence. The Labour Court has analysed the evidence recorded before it and has deprived the workman of the back wages on account of the delay of about 12 years, despite the workman having cited judgments delivered in **Gaurishankar Vs. State of Rajasthan**, [2015 LLR 785]; and **Ishwar Vs. Presiding Officer, Labour Court & others** [2015 LLR 595].

10. Having considered the above, I find that the direction of the Labour Court in refusing to grant back wages to the workman, cannot be faulted. The workman had caused a delay of 12 years in approaching the Labour Court. In an instrumentality like the Municipal Corporation, there is a possibility that the records may be destroyed after certain time. Nevertheless, the Corporation admits that the respondent was granted permanency and he was continued in employment till 31.07.1997.

11. In the above backdrop, if back wages are awarded to the workman, it would amount to granting him an advantage and he would be rewarded for his own wrong of approaching the Labour Court belatedly. The back wages, therefore, are rightly refused.

12. Insofar as the issue of reinstatement in service with continuity is concerned, though the respondent was a permanent employee, it cannot be ignored that he is out of employment for the past 22 years and 4 months i.e. from 01.08.1997. The petitioner is a State Instrumentality. The respondent is about 50 years of age. Placing reliance upon the judgments of the Hon'ble Apex Court in the matter of **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal** [2013 LLR 1009]; **Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh** [(2013) 5 SCC 136]; **BSNL Vs. Man Singh** [(2012) 1 SCC 558]; and **Jagbir Singh Vs. Haryana State Agriculture Marketing Board** [(2009) 15 SCC 327], it would be appropriate to quantify compensation as per the directions of the Hon'ble Apex Court by slightly enhancing the same keeping in view that about 6 to 7 years have passed pursuant to the decision of the Hon'ble Apex Court.

13. The learned Advocate for the workman submits that he has spent a lot of money on litigation. The Management of the Municipal Corporation did not wholeheartedly participate in the proceedings. The award delivered by the Labour Court was not respected. He had to approach the Industrial Court for seeking implementation of the award. He also had to approach the Labour Court by filing a Criminal Complaint. He, therefore, prays for enhanced compensation.

14. The Hon'ble Apex Court has concluded in the above referred judgments that if in peculiar facts and circumstances of the case, reinstatement is not feasible or proper, compensation of about Rs.30,000/- to 40,000/- per year of service would be fair. With the passage of six years, I find that the compensation at the rate of Rs.50,000/- per year of service would be appropriate and the respondent, having worked for about 8 years, would be entitled for compensation of Rs.4,00,000/- (Rs. Four lakhs). On account of the litigation, that the respondent had to resort to, owing to the non compliance of the judgment of the Labour Court, it would be appropriate to grant compensation of Rs.50,000/- (Rs. Fifty thousand) to the respondent to cover his litigation journey from 2010 till this date.

15. In view of the above and considering the law laid down by the Hon'ble Apex Court, Writ Petition No.3767 of 2017 is partly allowed. The impugned award is modified to the extent of clause (ii) and the petitioner shall, therefore, be directed to pay compensation of Rs.4,50,000/- (Rs. Four lakhs fifty thousand) to the respondent on or before 31.01.2020.

16. The learned advocate for the workman submits, on instructions, that the workman desires to donate an amount of Rs.10,000/- for the treatment of poor patients in the Government Medical Hospital at Aurangabad. As such, the petitioner-Corporation shall deposit an amount of Rs.4,40,000/- (Rs. Four lakhs Forty thousand) before the Industrial Court, Ahmednagar in Complaint (ULP) No.17 of 2018, on or before 31.01.2020. If the amount is not deposited within the time frame, interest @ 6% p.a. shall be levied on the said amount with effect from the date of the award of the Labour Court and such interest component shall be paid only from the personal salary of the Commissioner of the Municipal Corporation, Ahmednagar, and the said amount shall not be paid from the State exchequer. After deposit of the amount, the workman would be at

liberty to withdraw the said amount without conditions, under proper identification by his Advocate.

17. The amount of Rs.10,000/- (Rs. Ten thousand) shall be deposited by the petitioner with the High Court Dispensary, High Court Bench at Aurangabad, on or before the same date.

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

19. Consequent to the above, Writ Petition No.6011 of 2019 would not survive and stands disposed off. Rule is discharged.

20. Consequently, after the amount is deposited before the Industrial Court, Ahmednagar, by the petitioner, Complaint (ULP) No.17 of 2018 and Criminal Complaint (ULP) No.23 of 2018, would be withdrawn by the respondent from the Labour Court at Ahmednagar.

RAVINDRA V. GHUGE
JUDGE

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