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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2803 OF 2017

D. Y. Patil College Engineering and
Technology, Kolhapur & Anr.

.. Petitioners

Vs.

Smt. Mangal Shripati Injulkar & Ors.

.. Respondents

Mr. A.V. Anturkar, Senior Advocate, I/b. Sandeep S. Koregave for the
petitioners.

Mr. Meelan Topkar for the respondents.

CORAM : A.K. MENON, J.

DATED : 12TH MARCH, 2019.

P.C. :

1. The challenge is to an order and judgment dated 1st February, 2016 passed in Application (IDA)no.33 of 2010. The order directs payment of Rs.8,84,608/- to respondent nos.1 and 2 and Rs.8,94,222/- to respondent no.3. The petitioner has been directed to comply with the order within one month failing which interest was to be paid at 10% p.a. The judgment came to be passed pursuant to Complaint (ULP)no.317 of 1997 filed in the Industrial Court under Section 28 read with item 6, 9 and 10 of Schedule IV of the MRTU & PULP Act which was decided on 31st August, 2009. The petitioner was directed to provide the respondents with all benefits arising from their services

on par with male peons working with the respondents. The order passed in Complaint (ULP)no.317 of 1997 was thereafter impugned in Writ Petition (st)no.29508 of 2009 and the Application (IDA) in which the order impugned in this petition was passed under Section 33 C(2) consequent upon the aforesaid order dated 31st August, 2009.

2. The facts in brief are that the respondents were working in a girls hostel of the medical college which is managed by the petitioners and had filed the complaint alleging unfair labour practices by way of failure to treat the respondents on par with male peons and in accordance with the Standard Code Rules and Regulations. Writ petition(st)no.29508 of 2009 came to be rejected for non-removal of office objections and more particularly set out in this order dated 28th February, 2019 passed in Civil Application (st)no.33376 of 2017. As a result of failure to comply with the order passed by the Industrial Court in Complaint (ULP)no.317 of 1997 in the application under Section 33C(2), the Labour Court has framed an issue as to whether the respondents are entitled to receive the amounts claimed in the application. Both parties led evidence. The Labour Court after considering the facts observed that the amount claimed was capable of computed in terms of money and observed that the Labour Court was specifically designated for the purposes of computing the money value

or the benefits due to a workman. The respondents could thus claim benefits capable of being computed and also arrears of wages, salary or other allowance which have been withheld.

3. The Court observed that the order passed in Complaint (ULP)no.317 of 1997 which was the basis of the application under Section 33C(2) had not been stayed and it was found that the amounts claimed were actually due and payable and that the order of the Industrial Court was required to be enforced. Merely filing of the writ petition challenging the order of the Industrial Court was not good enough and cannot use the ground for deny to entitlement of the workmen. After hearing the parties, the Industrial Court directed compliance with the order as aforesaid.
4. Mr. Anturkar the learned Senior Counsel appearing on behalf of the petitioners submitted that the order of the Industrial Court was subject matter of challenge and the writ petition was pending for a long time. Although due to inadvertence the petition was rejected, steps had been taken to restore that petition. Notwithstanding the fact that petition was dismissed, he submitted that that the impugned order could not be sustained inasmuch as the orders in Complaint (ULP)no.317 of 1997 passed by the Industrial Court was still subject to challenge and could

not be stated to be final. He submitted that the Labour Court could not have taken up the complaint under Section 33C(2) in entertaining the complaint. He submitted that there was no pre-existing right in favour of the workmen and the respondents were not entitled to benefits that have been now claimed by them.

5. In the course of the submissions, Mr. Anturkar submitted that the order under challenge could not be sustained and that the petitioner proposes to challenge the order passed in Civil Application (St)no.33376 of 2017 which came to be rejected on 26th February, 2019. He further submitted that the amounts ordered to be paid were not capable of being easily quantified and in any event the provisions of the Standard Code sought to be applied would not be applicable in the instant case. He invited my attention to the cross examination of the respondents witness conducted on 25th June, 2015 and canvassed the point that in the light of the deposition the impugned order could not have been passed in an application under Section 33 C(2) making reference to provisions of the Standard Code.

6. In my view these aspects as far as the applicability of the Code etc. have all been dealt with. The order passed by the Industrial Court on 31st August, 2009 clearly reveals that reference to the Standard Code

was made by the Advocate representing the present petitioners and this aspect has been considered by the Industrial Court on page 23 of the order whereby after making the specific reference in paragraph 13 and after dealing with the merits of these contentions the Industrial Court concluded that the Standard Code will apply to class-IV employees including the respondents who fell in the category of non-teaching staff.

7. In view of the aforesaid, it is not now open for the petitioners to question this aspect in this writ petition which challenges an order under Section 33 C(2). Furthermore, the order of the Industrial Court dated 31st August, 2009 today stands and was at all material times enforceable against the petitioners since the writ petition filed by them came to be rejected. The manner in which the challenge to the order of the Industrial Court has been handled clearly indicates that the attempt was to delay the conclusion of the proceedings because, had the petitioners been seriously aggrieved, they would have pursued the petition in right earnest. In the present set of facts the callous attitude of the petitioners has resulted in order of the Industrial Court being rendered enforceable and has remained enforceable for almost more than nine years.

8. Mr. Topkar submitted that the order of the Industrial Court was passed pursuant to an order of remand and after giving a full opportunity to the petitioners to agitate their case. The petitioners have thus been delaying the compliance of the order of the Industrial Court. Furthermore, in the cross examination of the petitioners witness Anil Pandurang Patil reference was made to the pay scale applicable to male peons and the witness was unable to explain why the amount claimed ought not to be paid. The witness was unaware of the monthly wages paid to the applicants. He did not have any reason as to why the petitioners were unable to provide the information as to the extent of liability which the petitioner had to the respondents. He could not explain why the respondents were paid the lower wages whereas the male peons had been paid the higher wages. This is one of the aspects that has supported the view taken by the Labour Court in its judgment dated 1st February, 2016.
9. On behalf of the respondents, Mr. Topkar has pointed out that the complaint was filed in the year 1997 before the Industrial Court and it was only in 2009 when the complaint came to be allowed. On 7th December, 2009 the petitioners challenged the order by filing the aforesaid Writ petition (st)no.29508 of 2009. In September 2010 a conditional order came to be passed and for want of compliance the

writ petition was dismissed. An application moved for restoration of the writ petition came to be withdrawn. Meanwhile, between 21st December, 2010 and 2nd April, 2011 the petitioners took adjournments to file written statement before the Labour Court. Finally in July 2011 a “No WS” order came to be passed. Attempts were made to recall this order, that was allowed and the written statement was filed in December 2011. Thereafter issues were framed and the matter was heard from time to time. Furthermore, difference in salaries was established by leading evidence in 2014. The civil application seeking restoration of the rejected writ petition was also disposed. This civil application was withdrawn on 13th November, 2017. In the meantime, the evidence in the matter concluded. It is in these circumstances that the Labour Court has passed the order impugned in this writ petition.

10. The Advocate for the petitioner had placed reliance on decisions of this Court and the Supreme Court, however, in the facts of the present case, these judgments are of no avail. In the case of *Annasaheb Virupaksha Bidre v/s. Dada Tatoba Patil & Others*¹ the appeal was dismissed on account of absence of the appellant. Presence of the appellant was held to be not necessary and therefore the civil appeal was restored. In the case of *Rafiq & Anr. v/s. Munshilal & Anr.*², the

¹ 2005(4) Bom.C.R. 319

² 1981 (2) SCC 788

Advocate had defaulted in his appearance resulting in dismissal of the appeal and the Supreme Court permitted costs of the appeal to be recovered from the Advocate who absented himself. These decisions have no bearing on the facts of the case presently under consideration.

11. In my view there is no substance in the challenge. The impugned order does not suffer from any perversity or lacuna. The order of the Industrial Court holds the fort and has accepted the evidence of the respondents while rejecting that of the petitioners witness.

12. In my view the challenge must fail and accordingly I pass the following order:

- (i) Writ petition is dismissed.
- (ii) No orders as to costs.

(A.K.MENON,J.)