

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

WRIT PETITION NO.909 OF 2019

The Commissioner, Kolhapur Municipal Corporation	... Petitioner
Versus	
Shashikala Vijay Bhore	... Respondent

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Mr. Abhijit M. Adgule for the petitioner.
Ms. Jayshree Tripathi for the respondent.

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CORAM : M. S. KARNIK, J.

DATE : 26th APRIL, 2019.

P. C.:

1. **Rule.** Rule is made returnable forthwith by consent of the parties and heard finally.

2. The petitioner-Corporation by this Petition under Articles 226 and 227 of the Constitution of India challenges an order dated 03.04.2018 passed by the Labour Court and as upheld by the Industrial Court in a Revision filed under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act of 1971") on 02.11.2018. Briefly stated, the respondent was an employee of the petitioner-Corporation. In a complaint of unfair labour practices filed before the Labour

Court at Kolhapur, the order dated 31.01.2000 of termination of the respondent was set aside. The petitioner was directed to pay backwages to the employee from the date of termination of her service till the date of attaining the age of superannuation. This order of the Labour Court dated 08.10.2010 was challenged by way of Writ Petition No.14104 of 2016 in this Court. This Court on 10.10.2017 dismissed the Writ Petition.

3. Thereafter, the employee filed a recovery application before the Labour Court under Section 50 of the Act of 1971. The employee claimed arrears of backwages. By an order dated 03.04.2018 the Labour Court was pleased to issue recovery certificate in favour of the employee directing the District Collector to recover Rs.12,81,208/- from the petitioner-Corporation. The Revision filed by the petitioner came to be dismissed by the Industrial Court on 02.11.2018.

4. Challenging the order of the Industrial Court, learned counsel for the petitioner submitted that the application made by the employee was not in terms and in the manner prescribed by Section 50 and further the same is not in terms as provided by Rule 97 (a) of the Labour Court (Practice and Procedure) Rules,

1975. Learned counsel for the petitioner would invite my attention to Form No.22 below the said Rules. He makes a specific reference to Clause 2, which according to him, the employee concerned has to make a specific mention to the amount which has been decided by the Labour Court. Learned counsel would submit that except for directing payment of backwages, the Labour court has not specified the amount payable to the employee and therefore, the application made by the employee under Section 50 of the said Act is not maintainable. He would rely upon the decision of this Court in the case of **Mahatma Phule Krishi Vidyapeeth, Rahuri, Dist. Ahmednagar and Another Versus Ahmednagar Zilla Shetmajoor Union, Trade Union Centre, Shrirampur and Others** reported in (2017) 4 Mah LJ 426 and in the case of **V. Ramanathan Versus Hindustan Lever Limited, Mumbai and another** reported in (2001) 4 Mah LJ 448 to contend the purpose of Section 50 is to assist a claimant for recovery of his determined dues and not to adjudicate or determine such dues whether they are payable or not. Learned counsel for the petitioner would thus submit that the dues are not determined by the Labour Court but what is granted is only backwages. He would submit that in these circumstances, the employee has

to first get dues determined by the Labour Court and only then procedure to make an application under Section 50 for the recovery of the dues can be made.

5. Learned counsel for the respondent on the other hand submitted that the dues are already determined. She invites my attention to the order of the Labour Court where the Labour Court has awarded backwages to the respondent from the date of dismissal to the date of superannuation. Thus, in her submission the Labour Court has awarded the backwages which amounts to determination of the dues to which the respondent is entitled.

6. I have heard learned counsel for the parties. It is not disputed that the Labour Court has awarded backwages to the respondent from the date of dismissal till the date of superannuation. In a challenge to the order passed by the Labour Court granting backwages to the petitioner, this Court has dismissed the Writ Petition filed by the Corporation on 10.10.2017. Pursuant to an application made by the employee under Section 50 in Form 22 as provided by Rule 97 (a) of the Rules, the Labour Court recorded a finding that the petitioner-Corporation did not rebut the contention of the respondent by

producing chart or annexure or any record in respect of pay scale and salary of employees working in their department. The Labour Court accepted the contention of the respondent about the pay scale and the salary to which the respondent was entitled, came to the conclusion that the backwages as computed by the respondent of Rs. 12,81,208/- are correct. Even the Industrial Court has in Para 25 recorded the backwages amount which is reflected below Exhibit U-6 and further that petitioner Corporation has not stated that the amount of backwages is not correct. The petitioner-Corporation did not produce any record to show that pay scale of employees working in the department of Kolhapur Municipal Corporation and Kolhapur Municipal Transport are different.

7. It is not in dispute that the respondent is entitled to the backwages as awarded by the Labour Court. Further the respondent placed material on record and the statement showing pay scale and the salary to which the employees working in the department are entitled during this period on the basis of which the Labour Court held the respondent is entitled to recover the amount of Rs. 12,81,208/- as backwages which are due and payable to the respondent. Even when the matter was heard on

the last occasion, I had called upon the learned counsel for the petitioner-Corporation to submit the statement as to what according to the petitioner would be the backwages to which the respondent is entitled to as admittedly they have to pay backwages in terms of the order of the Labour Court. Learned counsel, today would inform that the Corporation does not have any record to place their calculations on record and quantify the backwages. If in these circumstances, the respondent is held entitled to recover backwages to the tune of Rs.12,81,208/-, I do not find any perversity with the concurrent orders passed by the Courts below so as to warrant interference.

8. The Writ Petition is dismissed. Rule is discharged with no order as to costs.

9. Needless to mention that the respondent is entitled to withdraw amount of backwages which is already deposited with the Labour Court.

(M. S. KARNIK, J.)