

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13264 OF 2017

Bus Manager

.. Petitioners

Solapur Municipal Corporation & Anr.

Vs.

M. Saleem M. Kasim Pagadiwale

.. Respondent

Mr. Yuvraj Gharal i/b. Mr. Vijay Killedar for the Petitioner.

None for the Respondent.

CORAM : A.K. MENON, J.

DATED : 4th MARCH, 2019.

P.C. :

1. The challenge in this petition is to an order dated 23rd February, 2016 passed by the Industrial Court, Solapur in Miscellaneous Recovery (ULP) 4 of 2014. The impugned order came to be passed on an application seeking recovery pursuant to amounts claimed by the respondent pursuant to an order and judgment dated 28th April, 2014 passed by the Industrial Court in Complaint (ULP) No. 4 of 2009. By that judgment the complaint filed by the respondent under section 28, Items 9 and 10 of Schedule IV came to be allowed. The petitioner was directed to pay to the respondent all service cum retirement benefits of the deceased complainant to his wife as per rules so also complainant no. 2. Compliance was expected within three months.

2. The petitioner Corporation has admittedly not challenged this judgment. In the meanwhile the respondent had filed recovery application which came to be heard and decided on 23rd February, 2016. The petitioner was duly represented through its Advocate. The impugned judgment records that the petitioner did not abide by the judgment dated 28th April, 2014 and accordingly sum of Rs. 6,70,275/- was claimed with interest @ 8% per annum. After issuance of notice to the petitioners to file their say and the matter was heard as a result the recovery application was allowed. The petitioner was directed to pay a sum of Rs.4,15,000/- with interest @ 10% per annum from 28th July, 2014 to realisation.

3. Learned counsel for the petitioners seeks to assail order passed in the recovery application under section 50 of the MRTP and PULP Act on the basis that diverse sums of Rs.1,76,729/-, Rs.12,156/-, Rs.1,18,055/-, Rs.14,589/- and Rs.29,178/- have been paid to the respondents and a part has been withheld on account of certain criminal proceedings said to be pending against the employees in question. However, today it is contended that the Recovery Officer may be directed to consider these part payments said to have been made.

4. It is not for this Court to enter upon these disputed questions in exercise of the writ jurisdiction of this Court. The impugned order does not require any interference given the fact that the impugned order is passed on

Recovery Application passed by the judgment and order dated 28th April, 2014 by the Industrial Court, Solapur since that judgment still holds the field. The consequence of recovery must follow except that the Recovery Officer shall consider the petitioners contention that substantial amount has been paid. This aspect is for the Recovery Officer to look into and he shall consider whether appropriate credit is to be given or otherwise. It is made clear that this Court has not entered upon the merits and controversy and the Recovery Officer shall proceed in accordance with law and direct payment to the extent found due.

5. Petition disposed in the above terms.

(A.K. MENON,J.)