

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

WRIT PETITION NO. : 11930 OF 2019

1. The Secretry,
Arbab Education Society,
Yousufia Urdu School,
Peer Burhan Nagar, Nanded.
2. The Vice President,
Arbab Education Society,
Yousufia Urdu School,
Peer Burhan Nagar, Nanded
3. The Head Master,
Yousufia Urdu School,
Peer Burhan Nagar, Nanded. **... PETITIONERS**

VERSUS

Syed Irfan s/o Syed Abdul Gaffar,
Age : 35 yrs. Occu : Not known,
R/o House No. 71, Block No.5,
Labour Colony, Nanded **... RESPONDENT**

....
WITH

**CIVIL APPLICATION NO. 14336 OF 2019 IN
WRIT PETITION NO. 11930 OF 2019**

Syed Irfan s/o Syed Abdul Gaffar,
Age : 31 Years, Occupation : Service,
resident of House No. 71,
Block No.5, Labour Colony, Nanded **... APPLICANT**

VERSUS

1. The Secretry,
Arbab Education Society,

Yousufiya Urdu School,
Peer Burhan Nagar, Nanded.

2. The Vice President,
Arbab Education Society,
Yousufiya Urdu School,
Peer Burhan Nagar, Nanded
3. The Head Master,
Yousufiya Urdu School,
Peer Burhan Nagar, Nanded. ... **RESPONDENTS**

...

Advocate for the Petitioners :- Shri V. R. Mundada
Advocate for the Respondent : Ms. A. N. Ansari

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st FEBRUARY, 2020.

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ORAL JUDGMENT :

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

2. On 27/09/2019, this Court had passed the following order while issuing notice :-

“1. The petitioner / Management seeks to challenge the judgment and order dated 06/09/2017 delivered by the Labour Court in Application (IDA) No. 23/2015, by which, the claim of the respondent was partly allowed under Section 33C(2) of the Industrial

Disputes Act, 1947. This petition has been filed on 09/08/2019.

2. Issue notice to the respondent, returnable on 22/11/2019. The petitioner / Management shall deposit the monthly wages @ Rs. 18,000/- for the period July and August 2014 and November 2014 to August 2015 in this Court, on or before 05/11/2019, failing which, this petition shall stand dismissed without reference to the Court on 06/11/2019. Needless to state, if the petitioner has paid any amount out of this total amount, proof of payment shall be placed on record.

3. Copy of the petition paper book shall be supplied for issuing notice, on or before 09/10/2019, failing which, this petition shall stand dismissed without reference to the Court on 10/10/2019."

3. By the Civil Application, the Respondent employee seeks liberty to withdraw the deposited amount, which is about Rs. 1,80,000/-.

4. Since the parties were agreeable to address the Court on the Writ Petition itself, the Civil Application

has been disposed off.

5. I have considered the strenuous submissions of the learned Advocates for the respective sides, have perused the petition paper book and have gone through the judgment of the Labour Court dated 06/09/2017.

6. The record reveals that the Petitioner Management filed its written say at Exhibit C-4. They have denied that the Applicant / employee had worked in between July 2014 to August 2015. However, no evidence was led on behalf of the Petitioners. The Applicant / employee led evidence and claimed that he was not permitted to sign the muster roll and therefore he was not paid the salary. It was conceded that a departmental enquiry was conducted and the enquiry report dated 03/05/2016 holds the employee guilty of the charges levelled upon him.

7. The Labour Court has passed a cryptic order purely relying upon the affidavit in lieu of examination in chief filed by the employee. It has failed to consider

as to whether it could exercise jurisdiction under Section 33C(2) of the Industrial Disputes Act, 1947 when the issue as to whether the employee had worked or not, was the crux of the matter.

8. In view of the above, this is a fit case for setting aside the impugned judgment. However, as the employee would suffer rigors of litigation due to a remand of the matter, the Management deserves to be subjected to costs.

9. Hence, this petition is allowed. The impugned judgment dated 06/09/2017 is quashed and set aside. Application (IDA) No. 23/2015 stands restored to the file of the learned Labour Court, Nanded.

10. The litigating parties agree to appear before the Labour Court at Nanded on 13/03/2020. Formal notices need not be issued. The employee would keep himself available for cross-examination on his evidence at Exhibit U-5. The Management would be at liberty to lead their evidence. The Labour Court would consider the scope of its jurisdiction while deciding the said proceedings.

11. By way of costs, the Respondent employee is at liberty to withdraw Rs. 50,000/- (Rs. Fifty Thousand only) from this Court. The Registry shall transfer the residuary amount of Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand only) alongwith accrued interest, to the Labour Court at Nanded in Application (IDA) No. 23/2015. Needless to state, the said amount shall be subject to the decision in the said proceedings and the amount of costs received by the employee, would be non refundable.

12. The Labour Court shall endeavour to decide the said proceedings as expeditiously as possible and in any case, on or before 31/12/2020. The execution proceedings filed by the Respondent employee, are rendered infructuous and shall stand disposed off.

13. Rule is made partly absolute in the abovesaid terms.

(RAVINDRA V. GHUGE, J.)

shp/-