

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6212 OF 2016

(Madhao Bahuuddeshiya Shikshan Sanstha, thr. its President, Shri Madhaorao
Manasao Bhoyar and others Vs. Smt. Pramila Bai Manikrao Katwale and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri P.N. Shende, Advocate for Petitioners.
Shri A.M. Balpande, AGP for Respondent No.2.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 3rd JANUARY, 2020.

1] Considering the peculiar facts of the case, I am not required to advert to the entire submissions of the learned Advocates.

2] Suffice it to say that the respondent workman has challenged her termination dated 27.07.2001 before the Labour Court by filing Complaint (ULP) No.27/2013. Prior thereto, the workman had preferred Miscellaneous (ULP) No.01/2013 seeking condonation of delay caused in filing the ULP complaint. By order dated 05.06.2013, the delay was condoned on the condition that the workman would not be entitled for any back-wages from the date of her termination dated 27.07.2001.

3] It is undisputed that the respondent complainant has attained the age of 58 years in 2010 and, as such, stands superannuated on completing 58 years since it was contended that she was working as a Peon with the petitioner trust.

4] The learned Advocate for the petitioner has

strenuously criticized the impugned judgment of the Labour Court dated 04.03.2016 by which Complaint (ULP) No.27/2013 has been allowed and while setting aside her termination dated 27.07.2001, the Labour Court has granted reinstatement, with continuity and full back-wages.

5] This Court has settled the law in the matters of *Devidayal Rolling Mills v. Engineering Workers Union and others* reported in *2008(4) Mh.L.J. 607* and *Clifford Rebello v. Hotel Oberoi Towers* reported in *2001 III CLR 805* that an order or judgment delivered by the Labour Court under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act) should not be directly challenged in this Court unless the statutory remedy of preferring a revision under Section 44 of the said Act is not availed of. However, considering that this petition is pending for almost four years and involves a lady employee who is now more than 68 years of age, I find it appropriate in entertaining the petition without directing the petitioner to avail of the revisional remedy under Section 44 of the Act. The workman has no objection.

6] The Labour Court had deprived the original complainant, back-wages while condoning the delay vide order dated 05.06.2013. Neither the employer nor the complainant has challenged the said order under Section 44 before the Industrial Court or through any petition before this Court. The said order therefore, attains finality and the original complainant cannot be granted back-wages. It is obvious that the Labour Court has delivered the impugned judgment dated 04.03.2016 being oblivious of the earlier

order passed by the learned predecessor of the said Court on 05.06.2013 by which the delay was condoned on the condition that the complainant would not be entitled for back-wages for the entire period of delay. Being oblivious of this fact, the Labour Court has granted full back-wages vide the impugned judgment. This petition therefore, succeeds to the extent of the grant of full back-wages.

7] The learned AGP has contended that the original complainant was appointed by the Trust without following the due procedure of law and without taking the prior permission of the department under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act). With this background, the complainant would have to press for all service benefits as against the petitioner management and the State Government would not shoulder the financial responsibility of payment of retiral benefits.

8] The learned Advocate for the petitioner management canvassed that the retiral benefits or all such benefits as may be permissible in law, will have to be paid by the State Government.

9] I do not find that the submission of the petitioner management could be accepted. Had the due procedure of law been followed and had the Department of Education sanctioned the appointment of the complainant, the retiral benefits and the salary grants, if any, would have taken care of the monetary benefits available to the original complainant. The management cannot take advantage of its own wrong and therefore, the State Government cannot be

burdened with such monetary payments.

10] The learned Advocate for the petitioner has strenuously canvassed that the original complainant was never an employee of the Education Society and she was actually deployed by the President of the Trust, as a domestic help at his residence. I find that this submission cannot be entertained for the reason that the original complainant had initially approached the Labour Court under Section 33C (2) of the Industrial Disputes Act, 1947 seeking recovery of money due from an employer. It was contended by her that unpaid wages and other service benefits for an amount of Rs.3,97,653/- were not paid by the Trust. By judgment dated 11.12.2009, the Labour Court has partly allowed application (IDA) No.18/2007 and has granted an amount of Rs.40,500/- as unpaid salary dues.

11] Both the parties approached this Court against the said judgment. The petition preferred by the employee seeking enhancement in the quantum of unpaid amounts, has also been dismissed by this Court. As such, the issue that is settled by the judgment of the Labour Court dated 11.12.2009 is that the Trust was held to be the employer of the said workman and the amount of unpaid legal dues was directed to be paid. In this backdrop, the contention of the petitioner that there was no employer, employee relationship between the Trust and the employee, need not be entertained.

12] The issue that remains to be considered in this proceeding is as regards the retiral benefits payable to the original complainant. As the Labour Court has granted

continuity in service while setting aside the termination order dated 27.07.2001 and as the complainant attained the age of superannuation in 2010, she would be entitled for gratuity from the date of her joining duties till her superannuation in 2010. For the reasons recorded herein-above, such gratuity and retiral benefits will now have to be paid by the petitioner management since it was the management which is held to have appointed the employee in their service.

13] As such, this petition is partly allowed. The direction of the Labour Court granting full back-wages to the original complainant stands quashed and set aside. As the employee has attained the age of superannuation, the direction to reinstate her would be treated as being notional reinstatement in service for which she would not be entitled for back-wages in view of the earlier order of the Labour Court dated 05.06.2013.

14] Needless to state, the gratuity amount and retiral benefits, if any, payable to the said employee, shall be calculated by the petitioner management and shall be paid within a period of twelve weeks.

15] The issue as to whether the employee respondent no.1, is entitled for pensionary benefits, is kept open.

(Ravindra V. Ghuge, J.)