

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

**CIVIL APPLICATION NO. 990 OF 2020
IN
WRIT PETITION NO. 352 OF 2019**

Shahaji Vinayakrao Pawal ... Applicant

Versus

The Managing Director

Jaibhawani Sahkari Sakhar Karkhand Ltd., ... Respondent

....

Mr. M. S. Indani, Advocate for the applicant

Mr. Pradeep Shahane, Advocate for the respondent

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 18th FEBRUARY, 2021

PRONOUNCED ON : 18th MARCH, 2021

PER COURT :-

1. The applicant (original respondent in Writ Petition No.352 of 2019) has filed this application for withdrawal of a sum of Rs.4,32,962/- deposited by the respondent (petitioner in writ petition), pursuant to the order passed by this Court on 26.11.2019 in the writ petition.

2. The applicant claims to be a retired employee of the respondent - sugar factory. He preferred Application IDA No.22 of

2015 against the respondent - sugar factory for recovery of money due on account of arrears of salary and service benefits. The Labour Court allowed the application vide judgment and order dated 16.08.2017 directing the respondent - sugar factory to pay the applicant a sum of Rs.4,09,904.94 Ps. with 10% interest per annum, besides, a sum of Rs.3,000/- towards cost of the said application.

3. According to the learned Advocate for the applicant, the applicant is a senior citizen. He is in need of money for his maintenance. The applicant is entitled to recover 70% of his monthly salary for the period from July-2004 to October-2005 (16 months) in terms of the agreement executed between the respondent - sugar factory and the workers' union on 24.02.2005. The witness examined on behalf of the respondent - sugar factory, has admitted the liability.

4. Learned Advocate for the respondent - sugar factory would ,on the other hand, submit that the order passed by the Labour Court is under challenge in the writ petition. He urged for hearing of the petition on merits. According to him, the applicant is not entitled to receive the amount since issue of legality of closure needs to be adjudicated upon and the claim of the employee for

wages during the closure period could be entertained only if the closure is held to be illegal. The issue of closure cannot be gone into by Labour Court under Section 33-C(2) of the I. D. Act.

Learned Advocate would further submit that the applicant would also not be entitled to claim amount of gratuity in the proceedings initiated under Section 33-C(2) of the I.D. Act. In support of his submissions, learned Advocate has relied on a judgment dated 17.10.2016 of this Court in the case of ***Jaibhavani Sahakari Sakhar Karkhana Ltd., Vs. Baban Achyutrao Kulkarni*** in Writ Petition No.3696 of 2016. The following authorities have also been relied on :-

- (i) *PAL VRS Employees Welfare Association Vs. Premier Automobiles Ltd. and another* -(2002) III LLJ 415 Bom;
- (ii) *Pioneer Embroideries Ltd., Mumbai Vs. Prithvi Singh and Ors.* 2009 I CLR 324;
- (iii) *Cement Corporation of India Vs. Presiding Officer, Labour Court and others – Himachal Pradesh High Court C.W.P No.186/1996;*
- (iv) *R.P.G. Cables Ltd. Vs. Roshan A. Sujan – 2002 (94) FLR 548;*
- (v) *Getwell Board and Paper (Pvt) Ltd. Vs. Fakruddin S. Lokhandwala and another – 2007 (113) FLR 392;*
- (vi) *Management of Kairbetta Estate Vs. Rajamanickam and ors – AIR 1960 SC 893.*

5. There cannot be any dispute over the legal proposition adumbrated in the authorities cited (supra) by learned Advocate for the respondent. It is also true that the writ petition is yet to be heard on merits. I have perused the impugned judgment and order. Also gone through the evidence in the case, particularly, cross examination of the witness examined on behalf of the respondent sugar factory. There was an agreement between the workers' union and the sugar factory. Some of the workers have worked during the closure period. Respondent – sugar factory had agreed to pay them 70% of their salary. Admittedly, the applicant has worked during the closure period. An extract from the ledger account of the respondent sugar factory was placed on record. The entries therein indicate that the respondent sugar factory admits to have owed a sum of Rs. 3,11,037=80 Ps to the applicant towards salary and other dues. It is an ascertained sum of money. Moreover, the witness Vishnu Yadav examined on behalf of the respondent sugar factory has in no uncertain terms, admitted that as per the ledger accounts the sugar factory owed the applicant a sum of Rs.3,11,037=80 Ps towards salary for the period of sixteen months.

6. In view of the aforesaid evidence and the fact that the applicant, a retired person, is in need of finance for maintenance of himself and his family, I am inclined to grant the application.

7. The civil application is allowed in terms of prayer clause (B).

8. The applicant shall furnish an undertaking along with surety/security to the satisfaction of the Registrar (Judicial) of this Court.

[R. G. AVACHAT, J.]

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