

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.11 OF 2021

Vishal Gomantak Shipping Company Pvt.
Ltd., rep. by its aut. Rep. Subramany

... Petitioner.

V/s.

The Mormugao Water Front Workers'
Union

.... Respondent.

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. Gaurish Agni, Advocate for the Respondent.

Coram: NITIN W. SAMBRE, J.

Date: 19th April 2021

P.C.:

The Industrial Tribunal And Labour Court in Ref. No. IT/38/02 allowed the claim of the respondent. Amongst other reliefs, payment of backwages to the extent of 50% was ordered. While dealing with the claim for consequential benefits of which the respondent would be entitled, the Commissioner, Labour, vide impugned order dated 30.11.2018 permitted the respondent to place on record certain documents for the purpose of calculation of the wages which are due to the respondent from the petitioner-employer.

2. According to the learned counsel for the petitioner, relevant notification issued by the competent authority certifying minimum wages, are only required to be considered. As such according to him, the

Respondent-authority ought not to have permitted the production of documents by way of impugned order. My attention is invited by the learned counsel for the petitioner to the observations made in para 32 and 33 of the judgment/award delivered on 30.11.2018 in Ref. No.IT/38/02 which reads thus:-

“32. Needless to mention, the Court may substitute re-instatement by compensation on justifiable grounds viz. where the industry is closed or where the employee has superannuated or going to retire shortly and no period of service is left to his credit or where workman has been rendered incapacitated to discharge the duties and is not fit to be reinstated or when he has lost confidence of the management to discharge duties. The Party I have proved that the refusal of their services were illegal and without following the principles of natural justice. The employer has terminated the services of Party I w.e.f. 17.1.2002 for Part A workers and 18.1.2002 for Part B workers. The workmen have however not pleaded as well as deposed that they were unemployed during the said period. There is also no dispute that some or the workmen have expired and some have already crossed the date of superannuation. There is also nothing on record that the workmen were permanent workmen. The appointment letters have not been produced on record. There is also no evidence that Party II is still functioning and is carrying on business at Goa. They are therefore not entitled for reinstatement in service.

33. The Party I have also not produced on record the last drawn salaries of any of the workmen. The Notifications of minimum wages relied upon by Party II varies from Rs. 85/-

to Rs. 423 from the year 1.10.2000 till date for skilled workers and Rs. 60/- to Rs. 310/- from the year 1.10.2000 till date for unskilled workers. The above orders of office of the Commissioner, Labour and Employment have revised the rates or VDA on the basis of average Consumer Price Index number for various categories of employees in the Scheduled Employment. There is no dispute that no compensation has been paid to the Party I workmen and that they are entitled for atleast minimum wages and other benefits as per the said Notifications and Orders. The workers from Part A from Sr. No. 1 to 8 and 12 to 14 were skilled workers and the others were unskilled workers. The workers from Part B from Sr. No. 1 to 8, 10 to 13 and 30 were skilled workers and others were unskilled workers. The workmen however cannot claim entire back wages from its employer as of right as they have to plead and prove with the aid of evidence that after his refusal from service, they were not gainfully employed anywhere and had no earning to maintain themselves and their families, which they have failed to prove and therefore the workmen would not get back wages In its entirety. It would therefore be just and proper and In the interest of justice to award the workers of Part A and Part B of the schedule, 50 % of the total back wages along with other consequential benefits like in the case of **Rajasthan State Road Transport Corporation**, supra. It is therefore ends of justice would be met, if the Party I Workmen are paid 50% of. Total back wages along with other consequential benefits to be calculated on the basis of above Notifications and Orders, which would be just, proper and equitable in the facts and circumstances of the case. Hence, the above issues are answered accordingly.”

3. The learned counsel for the respondent would urge that the order impugned is in accordance with law.

4. Of course at this stage, this court is not required to go into the entitlement of the respondent to the wages particularly by looking into the calculations. However, it would be in the interest of both the parties to observe that while dealing with the claim of the respondent for backwages, the Commissioner shall also be sensitive to the observations made in para 32 and 33 made in the aforesaid award delivered on 30.11.2018.

5. With the above observations, this petition stands disposed of.

NITIN W. SAMBRE, J

jfd/-