

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 2980/2019

Shivaji Maruti Tone & Ors.

..... Petitioners

Vs.

State of Maharashtra & Ors.

..... Respondents

Mr. Manoj A. Patil a/w. Wilson Robi I/b. Y. B. Lengare for the
Petitioners

Mr. R. P. Kadam, AGP for the State

Mr. B. S. Mahamulkar a/w. Rahul D. Oak for Respondent
No.3.

Ms. Sakshi Sharma I/b. M. S. Bodhanwala & Co. for
Respondent No.4.

**CORAM: K.K.TATED &
RIYAZ I. CHAGLA, JJ.**

DATED : MARCH 18, 2021

P.C.

1 Heard.

2 Leave to amend the prayer clauses is granted.
Amendment shall be carried out during the course of the
day.

3 By this Petition under Articles 226 and 227 of the
Constitution of India, the Petitioners are seeking direction
against Respondent No.4 M/s. Rashtriya Chemical
Fertilizers Ltd. to provide the work of loading / unloading to
the Petitioners in accordance with the provisions of the

Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme 1970. The Petitioners are also seeking directions against Respondent No.3 - Board and Respondent No.4 - Company to pay to the Petitioner No.10 viz. Bhimrao Balu Kolekar and Petitioner No.59 Pandurang Maruti Kale, the settlement amount of Rs.1,64,600/- and provident fund amount deducted from their salary, forthwith with the interest and accrued thereon. The prayers of the Writ Petition read thus:

“34. The Petitioner, therefore most respectfully prays:

(a) Rule nisi be issued.

(b) That this Hon’ble Court by way of appropriate Writ, Order or direction be pleased to direct the Respondent No.4, RCF Company to provide the work of loading/unloading to the Petitioners in accordance with the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970

(c) That this Hon’ble Court by way of appropriate Writ, Order, or Direction be pleased to direct the Respondent No.1 to Sanction the posts of Inspectors for carrying out the function as per the Grocery Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 and further be pleased to direct the Respondent No.3, Board to conduct the drive on the establishment/companies covered under the said Scheme and make employment of the Petitioners on the said establishment/companies.

(d) *That this Hon'ble Court by way of appropriate Writ, Order, or Direction be pleased to direct the Respondent No.3, Board to provide the work in any establishment registered with the Respondent No.3, Board.*

(e) *That this Hon'ble court by way of appropriate Writ, Order, or Direction be pleased to direct the Respondent No.3, Board to maintain the seniority list and employ the unemployed registered mathadi workers including the petitioners in preference to the new workers.*

(f) *That this Hon'ble Court by way of appropriate Writ, Order, or Direction be pleased to direct the Respondent No.3, Board and the Respondent No.4, Company to pay the Petitioner No.10 I.e Bhimrao Balu Kolekar and Petitioner No.59, Pandurang Maruti Kale, the Settlement amount of Rs.1,64,600/- and the Provident fund amount deducted from their salary forthwith the interest accrued thereon.*

(g) *In the alternative, this Hon'ble Court by way of appropriate Writ, Order or Direction be pleased to direct the Respondent No.3, Board to decide the Representation 18.6.2018, 24.10.2018 and 05.12.2018 filed by the Petitioners within the stipulated period.*

(h) *That this Hon'ble Court by way of appropriate Writ, Order, or Direction be pleased to direct the Respondent No.1 and 2 to initiate the departmental enquiry against Shri Vijaykant Panbude, Chairman of the Respondent No.3, Board as per the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and punish in accordance with law.*

(i) *Pending the hearing and final disposal of the Writ petition, the Respondent No.3, Board and Respondent No.4, Company respectively be restrained from employing and/or registering any other new workers till the Petitioners have been employed.*

(j) Ad-interim and interim order in terms of prayer clause (I), hereinabove, be granted;

(k) Any further and equitable orders be passed in favour of the petitioner in the circumstances of the case as may be required."

4 The learned counsel for the Petitioners submits that in the present proceedings, earlier the Transport and Dock Workers' Union, Bombay had entered into a memorandum of settlement dated 13.01.1988 with Respondent No.4 in respect of the terms and conditions of the workers who were working with Respondent No.4. The terms and conditions of the settlement are as under:

TERMS OF SETTLEMENT

1. RCF reiterates that they shall abide by the commitments made before the Bombay High Court on 9th July 1986 and give employment to Registered workers who are members of the Transport and Dock workers' union accordingly.

2. (a) RCF agrees to take all possible steps to reinstate such of the registered workers who were denied employment during the period February and May, 1986.

(b) As a first step of reinstatement RCF agrees to give immediate employment to 214 registered workers according to their seniority cum eligibility in consultation with the Union. For this purpose the concerned workers will be given notice of fifteen days within which period if they do not report for work they will forfeit their claim on their job.

(c) With regard to absorption of the remaining workers the parties agree to mutually discuss and finalise it to their satisfaction within two months from the date of signing of this agreement.

3. *RCF agrees that reinstated workers will be employed on the same jobs they were performing prior to 31st March, 1986.*

4. *Parties agree that for the purpose of seniority of the registered workers the date of registration with the Grocery Board shall be taken as the determining factor.*

5. *RCF agrees that the practice of employing workers in gangs of ten each on the Bagging Plant shall be continued.*

6. *RCF agrees that all registered workers shall be entitled to weekly off with pay.*

7. *The Union agrees to lift boycott on ships carrying RCF cargo in the Port of Bombay and the RCF agrees to call back all the ships including undischarged ships carrying their cargos from Bombay with immediate effect.*

8. *Any problem arising out of this settlement shall be mutually discussed and decided by the Parties in order to maintain harmonious industrial relations."*

5 The learned counsel for the Petitioners submits that thereafter an Arbitrator was appointed between the parties. Therefore, the Arbitrator has passed the Award dated 29.08.1991 against the Respondents. In view of the order passed by the Arbitrator, the Respondent Company had filed Writ Petition No.5667/1991 challenging the Award dated 29.08.1991 with following prayers :

"(a) That this Honourable Court be pleased to issue a writ of certiorari, or a writ in the nature of certiorari or any other writ, order or direction calling for the records and proceedings of the arbitration proceedings hearing reference No.1 of 1988 and after examining the validity, legality and propriety thereof, this Honourable Court be pleased to set aside and quash the impugned Award dated 29th August 1991 (Exhibit 'u' hereto).

(b) That pending the hearing and final disposal of this petition execution, operation and implementation of the impugned Award dated 29th August 1991 (Exhibit "U" hereto) be stayed.

(c) Costs of this Petition be provided for.

(d) For such further and other orders as the nature and circumstances of the case may require."

6 The learned counsel for the Petitioners submits that during the pendency of the Writ Petition, the matter was settled between the Union and Respondent No.4 by entering into consent terms dated 21.09.1993. The consent terms were accepted by this Court by order dated 21.09.1993. Said consent terms read thus:

"CONSENT TERMS

1. Rashtriya Chemicals & Fertilizers Ltd., the Petitioner Company agreed to pay through the Grocery Markests and Shops Board for Greater Bombay ("the Grocery Board"), the 2nd Respondent herein, to each of the Registered Mathadi Workers from the list Annexure I hereto who continue to be registered with the 2nd Respondent Board on the date of the execution of these Consent Terms, an aggregate sum of Rs.1,52,000/- (Rupees one lac fifty two thousands Only) in full and final satisfaction of all their claims against the Petitioner Company arising out of the impugned Arbitration Award dated 29th August 1991 made by Mr. D. M. Rege and Mr. R. N. Gawande as Arbitrator or otherwise the said amount of Rs. 1,52,000/- is in addition to the amount of Rs.12,000/- already received by each of the aforesaid Registered Mathadi Workers from the list Annexure I hereto, from the Petitioner, Company during the period 1988 to 1991. The said aggregate sum of Rs. 1,52,000 /- (Rupees one lac fifty two thousand only) shall be the capital receipt of each of the said Registered Workers on his having finally agreed to end

all disputes and relinquish all his expectation/ claims and /or right for reinstatement of any other right and/or demand on the Petitioner Company and to enable each of the said Registered Mathadi Workers and his family/ dependents to meet his personal needs of life being hereafter without secure of income and without right to work with the Petitioner Company. The said payment is, and shall be in full and final settlement and satisfaction of all his claims/expectation/disputes with the Petitioner Company. It is expressly agreed amongst the parties hereto that the registered Mathadi Workers from the list annexed hereto were the registered Mathadi Workers of the 2nd Respondent Grocery Board at the relevant time and continue to be so on the date of execution hereof and the said registered mathadi workers are the only workers in a respect of whom the aforesaid Arbitrators in the impugned Award dated 29th August 1991 have given direction. Transport and Dock Workers Union the 1st Respondent herein ("the 1st Respondent Union") and the Petitioner Company agree that save and except the registered mathadi workers from the list Annexure I hereto no other workers are entitled to reinstatement of payment of back wages or any other reliefs under the impugned Award dated 29th August 1991 or otherwise:

2. All registered Mathadi Workers from the list in Annexure I hereto (through the 1st Respondent Union) and the 1st Respondent Union agree and declare that upon the Petitioner Company Depositing with the 2nd Respondent the Grocery Board for being distributed by the 2nd Respondent to the registered Mathadi Workers from the list Annexure I hereto who continue to be registered Respondent Union. The receipt issued by each registered Mathadi Workers will be endorsed by an authorised office bearer of the 1st Respondent Union.

3. The Registered Mathadi workers from the list of Annexure I hereto in the case of a deceased registered Mathadi workers legal heirs shall claim the payment of the said amount of Rs. 1,52,000/- on or before 31st March 1994 from the 2nd respondent Grocery Board

who shall make payment of the amount payable to such eligible registered worker/claimant in case of a deceased registered Mathadi worker within seven days after verification of the claim by the 2nd Respondent Grocery Board. In the event of any amount remaining unclaimed with 2nd Respondent Grocery Board, the petitioner company will withdraw the unclaimed amount from the 2nd Respondent Grocery Board the 1st Respondent union agrees that such of the workers enumerated in Annexure I hereto (and who are eligible to receive the amount as aforesaid) who fail to claim and receive the aforesaid amount of Rs.1,52,000/- on and before 31st March 1994 shall be considered as not having any claim against the Petitioner Company of any kind of nature whatsoever pertaining to the Arbitration Award or otherwise.

4 Without prejudice to the right of the 1st Respondent union to press for abolition of Contract Labour System in view of this settlement the 1st Respondent Union agrees and undertakes to withdraw Special Leave Petition (Civil) No. 10487 of 1986 (Transport and Dock Workers Union Bombay Vs. Union of India and Ors.) which with the 2nd Respondent board on the date of execution hereof, the amount agreed to be paid to each of them by the petitioner company and the said Registered Mathadi Workers receiving through the Grocery Board the amount payable to each of the said registered Mathadi workers, none of the said workers covered by the Arbitration Award nor the 1st Respondent Union shall have any claim either of monetary nature or for reinstatement or of any other kind or nature whatsoever against the Petitioner, Company. However such of the registered Mathadi Workers who receive the aforesaid amount relinquishing their claim of all kind or nature on the Petitioner Company will continue to be Registered Mathadi Workers of the 2nd Respondent Board.

5. The Petitioner Company have deposited with the 2nd Respondent Grocery Board on amount of Rs. 1,52,000/- (Rupees one lac fifty two thousand only) for

each of the registered Mathadi Workers from the list Annaxure. I hereto covered by the impugned Award dated 29th August 1991 on or before the execution hereof.

6. The 2nd Respondent Grocery Board shall disburse the said amount of Rs. 1,52,000/- on behalf of the Petitioner Company to each registered Mathadi Workers from the list Annaxure. I hereto upon his issuing receipts in the form set out in Annaxure II hereto.

7. Each Registered Mathadi worker will be identified by the 2nd Respondent Grocery Board from the registration records of the 2nd Respondent Board and the 1st pending in the Supreme Court of India.

8. With these Consent Term, all monetary claim of 1st Respondent Union arising out of the agreement dated 8th January 1988 entered into between the Petitioner and the 1st Respondent also stand settled.

9. With these Consent Terms, all the claims of the 1st Respondent Union and all the Registered Mathadi Workers who are members of the 1st Respondent Union arising out the Arbitration Award dated 29th August 1991 or otherwise stand fully satisfied and neither the 1st Respondent Union nor the Registered Mathadi Workers have any other claim of any kind or nature whatsoever against the Petitioner Company.”

7 The learned counsel for the Petitioners submits that as per the consent terms, each Petitioner had received a sum of Rs.1,64,600/- except Petitioner No.11 and 16.

8 The learned counsel for the Petitioners submits that thereafter the Petitioners being registered Mathadi Workers, approached Respondent No.3 seeking work with Respondent No.4. As the Respondents failed and neglected to accept their request, the Petitioners filed the present Writ

Petition.

9 The learned counsel for the Petitioners submits that being registered Mathadi workers with Respondent No.3, the Petitioners are entitled to the work with Respondent No.4, as a matter of right, with whom earlier they were working. He submits that in the interest of justice, this Hon'ble Court be pleased to direct Respondent No.3 to allow the Petitioners to work with Respondent No.4, immediately along with other reliefs.

10 On the other hand, the learned counsel for Respondent No.4 has vehemently opposed the Writ Petition. She submits that as per the consent terms dated 21.09.1993 passed in Writ Petition No.5667/1991 they had already paid the entire amount of Rs.1,64,600/- to each worker through Respondent No.3, who had disbursed the said amount to the Petitioner - workers. She submits that all the Petitioners were members of the Union who executed the consent terms with the company. Therefore, the decision taken by the Union is binding on the Petitioners also. The learned counsel for Respondent No.4 relies on paragraph Nos.8, 9, 13, 14 and 15 of the reply dated 29.01.2021, which read thus:

"8 I say that the differences arising out of the Petitioner's grievances were referred to a tribunal comprising of two arbitrators, the Hon'ble Mr. Justice D.M. Rege (Retd). The Tribunal proceeded to render an Award on November 11, 1991 directing the Respondent No.4 to reinstate the 176 Mathadi workers, including the present Petitioners.

9 I say that the Respondent No.4 challenged the aforesaid Award by filing a Writ Petition No. 5667 of 1991 in the Bombay High Court. The same was disposed of by an order September 21, 1993 in terms of the Consent Terms arrived at between the Petitioners herein, the Transport and Dock Workers' Union and the Respondent Nos.3 and 4. Hereto annexed as Exhibit "B" is a copy of the order order September 21, 1993 under which the Respondent No.4 paid a severance package to the 176 Mathadi workers (including the present Petitioners) totalling to Rs.1,64,600/- to each worker towards compensation for voluntary retirement. This compensation was paid by the Respondent No.4 to the Respondent No.3 which in turn disbursed the amounts to the workers, who continued however to be registered with the Respondent No.3 Board.

13 I say that it is settled law that once an Ex-gratia severance/settlement package is duly paid out and accepted pursuant to Consent Terms duly entered into between the parties, with the same being filed on record before this Hon'ble Court, it is now not open to these Petitioners to challenge the said Terms after accepting the benefits duly paid out to them. Furthermore, it is most perplexing to not that whilst these Petitioners have made frivolous assertions in paragraph no.6 of their Writ Petition as to Consent Terms being entered into "behind the back" of these Petitioners on the one hand, whilst praying for a direction to the Respondent Nos.3 and 4 to pay to the Petitioner Nos.11 and 60 amount of Rs. 1,64,600/- being the severance amount on the other hand. This reveals the duplicitous conduct of the Petitioners despite the fact that it was nowhere incumbent upon the Respondent No. 4 to pay any severance amount to these workers, who by the very nature of their work are delegated work on an ad-hoc need-based basis. The Respondent No.4 states that this amount of Rs. 1,64,600/- paid to each worker on an Ex-gratia basis has been duly handed over to the respondent No.3 for further disbursement to its registered workers. Therefore, any grievance on the part of Petitioner Nos. 11 and 60 as to disbursement of the amount should be directed to the Respondent No. 3 Board and not to the Respondent No. 4. The Petitioners have in fact failed to justify as to why the Respondent No.4 has been impleaded in the present Writ preset Writ proceedings as a party all. Hereto annexed and marked Exhibit "D" are copies of the acknowledgements of receipt of the voluntary severance amount by the Petitioners herein as reflected in the Register maintained

by the Respondent No.4.

14. I say that the Respondent No. 4 had addressed a letter dated March 24, 2018 to the Chairman of the Respondent No.3 Board setting out in great detail the Respondent No.4's requirements for Marthadis and giving a detailed break-up of the numbers working at the Respondent No.4's Thal Plant and conclusively setting out that there are in fact 186 excess Mathadis on the premises of the Respondent No. 4 and that in light of the same, the Petitioner's contention in paragraph no. 11 of the Writ Petition alleging "sufficient workload available" is also false and denied by the Respondent No.4 The said letter is annexed by the Petitioner at page 112 (Exhibit 'J') of the Writ Petition. A copy of this letter dated March 24, 2018 has also been marked to the Advocate representing these Petitioners, Mr. Y.B. Lengare.

15 I deny that these Petitioners have "got permanent status in the RCF Company" as falsely alleged by them in paragraph no. 3 to the Writ Petition. the definition of "worker" as per Section 2 (12) of the Maharashtra Mathadi, Hamal & Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 reads: "worker" means a person who is engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled employment and, includes any person not person not employed by any employer or a contractor, but working with the permission of ,or under agreement with the employer or contractor; but does not include the members of an employer's family."

11 The learned counsel for Respondent No.4 submits that in view of the consent terms dated 21.09.1993 which was acted upon by the parties, there is no question of entertaining the present Writ Petition. Same is liable to be dismissed with costs.

12 The learned counsel for Respondent No.3 Board has

also vehemently opposed the Writ Petition. He submits that as per the consent terms dated 23.09.1993, the entire amount was deposited by Respondent No.4 and they have distributed the same to the Petitioners. He submits that bare reading of the consent terms shows that the Petitioners cannot claim any right, title or interest either against Respondent No.4 or Respondent No.3. Therefore, the Writ Petition be dismissed with costs.

13 We heard both the sides at length. It is to be noted that in the present proceedings all the Petitioners were members of the Transport & Dock Workers' Union, Mumbai. The Petitioners through Union, entered into Memorandum of Understanding dated 09.03.2021 with Respondent No.4 M/s. Rashtriya Chemical Fertilizers Ltd. Because of some dispute between the parties, the matter was referred to the Arbitrator and the Arbitrator had passed Award dated 29.08.1991 which was challenged by Respondent No.4 by filing Writ Petition No.5661/1991 before this Court, wherein the Union of Respondent No.4 had entered into the consent terms and as per the consent terms, Respondent No.4 agreed to pay compensation of Rs.1,64,600/- to each member of the Union as stated in the consent terms. That amount was deposited by Respondent No.4 with Respondent No.3 and same was distributed to the Petitioners' members in the year 1993 itself. After accepting the said amount, now the Petitioners are coming before this Court for several reliefs as stated in the Writ Petition, on the basis of same cause of action.

14 Considering these facts, as the matter is already settled between the parties before this Court in Writ Petition No.5667/1991, there is no question of entertaining the Writ Petition for same cause of action.

15 Hence, the Writ Petition stands dismissed.

16 No order as to costs.

(RIYAZ I. CHAGLA, J.)

(K.K.TATED, J.)