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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISIDICIION
CIVIL APPLICATION NO. 1156 OF 2011
IN
WRIT PETITION NO. 4377 OF 1994**

Superintending Agricultural Officer
Nashik Division, Nashik & Ors.

.. Applicants/
Org. Petitioners

Versus

Sham Wamanrao Gaikwad & Ors.

.. Respondents

Ms. M. S. Bane, AGP for applicants/org. petitioners.

Ms. Seema Sarnaik for respondent nos.2, 3, 4, 6, 8, 12, 20, 22, 24, 27, 41, 48, 63, 66, 67, 77, 78, 101, 102, 106, 107, 110, 111, 112, 113, 115, 132, 141, 153, 155, 159, 163, 164 & 167.

Mr. Pramod N. Joshi for respondent nos.5, 10, 11, 13, 15, 18, 19, 21, 23, 26, 33, 34, 35, 43, 37, 49, 95, 114, 123, 125, 128, 150 & 158.

CORAM: G. S. KULKARNI, J.

DATE: SEPTEMBER 29, 2021

PC:

1. This is an old pending Civil Application filed on May 5, 2011 seeking restoration of the Writ Petition No. 4377 of 1994, which came to be dismissed by the following order passed on February 2, 2011: -

“ It appears that the petition has become infructuous after the passage of time and is therefore dismissed as such.

However, if anything survives in the petition, the petitioner is at liberty to move the Court after giving notice to the respondents. The petitioner must also show that the dispute still survives if it wants to have the petition restored.”

There is also a prayer for condonation of delay, however, there is a blank in the prayer in as much as the period of delay has not been set out. The application, therefore, itself is defective on the prayer made in regard to the condonation of delay.

2. Be that as it may, what is material is that when the writ petition was dismissed by this Court by the aforesaid order, as infructuous with the passage of time with a liberty to the petitioner to move the Court if anything survives in the petition, however, with a condition that if something survives, the petitioners were under obligation to show that the dispute survived if they intended to have the petition restored. Accordingly, I have asked Ms. Bane, learned AGP, to show the averments in the application which would point out that something would survive in the writ petition. Ms. Bane, however, could not draw my attention to any averment in the civil application to show that something remains to be adjudicated on the writ petition.

3. There is a reason for this and which is clearly

reflected from the order dated August 3, 1993 passed by the Industrial Court, Nashik, on the Revision Application(s), which were filed by the petitioners assailing the order passed by the Labour Court, Nashik dated July 31, 1992. In paragraph 8 of the said order, the Industrial court has categorically observed that during the pendency of the revision applications, an application was made on behalf of the revision petitioners at Exh.C-5 requesting to stay the operation of the order of the Labour Court dated July 31, 1992. It was mentioned that out of 176 employees, 146 have been absorbed in Government service. Out of these 146, 126 persons were given appointments in view of Government Resolution dated January 1, 1992 and that too prior to the judgment dated July 31, 1992 passed by the Labour Court. It was also recorded that remaining 20 persons have been employed in view of Circular dated January 1, 1992 and they accepted the conditions of service as imposed.

4. Ms.Seema Sarnaik and Mr.Pramod Joshi, learned counsel appearing for the respondents-workers state that in the above circumstances this Court had rightly disposed of the writ petition by the order dated February 2, 2011 as infructuous as

also the said order was passed in the presence of the petitioners. They submit that there is nothing on record to show that the impugned orders passed by the Labour Court and as confirmed by the Industrial Court were not acted upon and, in fact, have been accepted and implemented qua the absorption of the concerned workers, hence, nothing had remained to be adjudicated on writ petition.

5. In the above circumstances, it appears to be clear from the memo of the application that no averment has been made by the applicants/petitioners that any dispute at all survives and as such no relief can be granted on this application.

6. The application is accordingly dismissed, No costs.

(G. S. KULKARNI, J.)