

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

LETTERS PATENT APPEAL NO.381/2011 IN
WRIT PETITION NO.2161/2003

1. The Chief Executive Officer,
Zilla Parishad, Wardha.
2. The Deputy Engineer,
Minor Irrigation Supply Division,
Hinganghat, District Wardha.

... Appellants

versus

1. Shri Pandhari Bhaurao Maske,
Aged about 42 years,
R/o. Saigavan Post Nimbha,
Tq. Samudrapur, District Wardha.
2. The Judge 3rd Labour Court,
Nagpur.

..Respondents

Mrs. Sangeeta Jachak, Advocate for the appellant - Zilla Parishad.
None for respondent no.1.

CORAM : A. S. CHANDURKAR AND G.A.SANAP, JJ.
DATED : 1st September, 2021

Oral Judgment : (Per A.S.Chandurkar, J.)

The challenge raised in this Letters Patent Appeal is to the judgment dated 17.12.2009 passed by the learned Single Judge in Writ Petition No.2161/2003 to the extent the appellant - Zilla Parishad has been restrained from recovering the amount of Rs.25,900/- that was received by the respondent no.1 under the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947').

2. The case of the respondent no.1 is that he had worked as a Pump Operator and Watchman on the wages of Rs.700/- per month from 07.03.1993 and that had not received his wages from July 1995 till March 1999. He therefore filed an application under Section 33-C(2) of the Act of 1947 seeking recovery of that amount before the Labour Court. The Zilla Parishad opposed the said application by taking a stand that the respondent no.1 was never engaged by the Zilla Parishad. After considering the evidence on record the learned Judge of the Labour Court by order dated 27.01.2003 partly allowed the application and directed the Zilla Parishad to pay an amount of Rs.25,900/- towards salary for the period from 30.07.1995 to 30.06.1998. The Zilla Parishad being aggrieved by the aforesaid order filed Writ Petition No. 2161/2003. By the judgment dated 17.12.2009 the learned Single Judge allowed the said writ petition and set aside the order dated 27.01.2003 passed by the Labour Court. However in the peculiar facts of the case and in the interests of justice, it was directed that the amount having been withdrawn by the respondent no.1 about five years ago should not be recovered. It is this direction which is the subject matter in the present Letters Patent Appeal.

3. Heard Mrs. Sangeeta Jachak, learned counsel for the appellant - Zilla Parishad who submitted that having found that the

order passed by the Labour Court was not sustainable in law and having rightly set aside the same, it was not open for the learned Single Judge to have directed that the amount awarded under Section 33-C(2) of the Act of 1947 which was deposited by the Zilla Parishad and subsequently withdrawn by the respondent no.1 should not be recovered from him. There was no legal basis to issue the said direction. Despite succeeding in having the order passed by the Labour Court set aside, the Zilla Parishad was restrained from recovering that amount from the respondent no.1.

There is no appearance on behalf of the respondent no.1.

4, We have heard the learned counsel for the Zilla Parishad and we have considered the submissions made on behalf of the appellants. It is true that in the writ petition filed by the Zilla Parishad, the order passed by the Labour Court dated 27.01.2003 came to be set aside. During the pendency of the writ petition, as a condition for grant of stay, the Zilla Parishad was directed to deposit the amount of Rs.25,900/- in this Court. This amount came to be withdrawn by the respondent no.1 pursuant to permission granted in that regard on 02.07.2004 . Ordinarily having succeeded in the writ petition, the amount deposited could have been ordered to be recovered. However, after noting the peculiar facts of the case and in the interests of justice, the Zilla Parishad was restrained from recovering the amount

from the respondent no.1. We find that this direction having been issued in the peculiar facts of the case and in the interests of justice, we are not inclined to interfere with the discretion exercised in favour of the respondent no.1. It is noted that it was the case of the respondent no.1 that he was engaged as a labourer on a monthly wages of Rs.700/- and that the amount involved is Rs.25,900/-. Hence in this backdrop the aforesaid discretion was exercised by the learned Single Judge.

5. In view of the aforesaid, we do not find any reason to take another view in the matter in the light of the discretion as exercised. Letters Patent Appeal No.381/2011 is accordingly dismissed leaving the parties to bear their own costs.

JUDGE

JUDGE

Andurkar..