

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

13 WRIT PETITION NO.3322 OF 2022

**BABURAO GANGARAM PAGARE AND OTHERS
VERSUS
THE MANAGER M/S UNITED SPIRIT LIMITED**

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Advocate for Petitioners : Mr. A. S. Shejwal
Advocate for Respondent : Mr. S. V. Dankh

CORAM : RAVINDRA V. GHUGE, J.
DATE : 21st March, 2022

ORDER:

1. By this petition, the petitioners seek to challenge the order dated 02.02.2022 passed by the 2nd Labour Court, Aurangabad below Application Exh.C-9 in Reference (IDA) No.69/2017 vide which, the respondent Management is permitted to file it's written statement on the date on which the matter was posted for pronouncing of the judgment and award.

2. Though a caveat was not filed, Shri Dankh, who appeared for the management as first party employer before the Labour Court, has appeared in the matter and has stated that the Management would abide by any directions this Court may issue in order to ensure that the pending reference case is decided expeditiously.

3. The following dates and sequence of events are germane for a decision in this matter:-

- (a) On 10.09.2018, 17 petitioners filed their statement of claim.
- (b) On 10.10.2018, the Management did not file its written statement.
- (c) On 29.03.2019, the Labour Court imposed cost of Rs.1,000/- to enable the Management to file its written statement which was not filed.
- (d) On 05.04.2019, "No W.S." order was passed.
- (e) Between 19.08.2019 to 09.03.2020, the petitioners led evidence.
- (f) From 24.03.2020 there was a national lock-down due to Covid-19 pandemic.
- (g) The petitioners closed their evidence by filing purshis on 06.10.2021.
- (i) The matter was posted for advancement of final arguments on 30.11.2021. None appeared for the Management.
- (j) The matter was posted for pronouncement of judgment and award on 04.12.2020. However, the management filed Exh.C-9 praying for opportunity to file written statement.
- (k) On 02.02.2022, the impugned order allowing Exh.C-9 was passed and the Management was permitted to file its written statement with cost of Rs.25,000/- which has been deposited before the Labour Court.

4. I have considered the strenuous submissions of the learned Advocates for the respective sides.

5. The grievance of the petitioners is well placed as the impugned order has resulted in turning back the clock to the stage of recording oral evidence, by at least 2 years and six months. It cannot be ignored that these petitioners have been dismissed from service after conducting domestic enquiry in accordance with the provisions of the Certified Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. The charges levelled upon these petitioners have been held to be proved. Based on the report of the enquiry officer, these petitioners have been dismissed. The Labour Court will, therefore, have to decide, by way of a Part-I Award, the legality and fairness of the enquiry and the findings of the enquiry officer which is a settled principle of law.

6. In such situation, a contest between the Management and workers in the Court of law, is necessary. If the Management was negligent in not filing the written statement in time and seeks leave to file it now, this will reverse the clock by two years and six months and, therefore, substantial cost can be imposed upon the Management so as to compensate the petitioners who are out of employment.

7. There are 17 petitioners who are 2nd party employees before the Labour Court. Each of them has been dismissed from service. The Labour Court has imposed cost of Rs.25,000/- which I find to be a paltry amount in view of the facts and circumstances recorded above. In this circumstance, I am of the view that each of these petitioners would be compensated, if cost of Rs.3000/- per petitioner is imposed upon the Management.

8. The learned Advocate for the Management submits on instructions from the instructing officer present in the Court that the Management would cooperate with the Labour Court in the expeditious disposal of the reference case.

9. In view of above, this petition is partly allowed only to the extent of enhancing the cost so as to ensure that each of the 17 employees get an individual amount of Rs.3000/-. Hence, the following directions:

- (a) The respondent Management would deposit a further amount of Rs.26,000/- before the Labour Court on or before 11.04.2022.
- (b) Each of the employees would be eligible to withdraw Rs.3000/- from the Labour Court without conditions by making a joint application, identified by the Advocate.

- (c) Since the written statement is now filed and is on record, the Labour Court shall frame the following two issues along-with other issues:-
- (i) Whether the 2nd Party Workmen prove that the domestic enquiries conducted are in violation of the principles of natural justice and, therefore, be declared as vitiated ?
 - (ii) Whether the 2nd party workmen prove that the findings of the enquiry officer in their respective cases, are perverse ?
- (d) The respondent Management shall produce the original record and proceedings pertaining to the domestic enquiries conducted against these 17 petitioners, before the Labour Court, on or before 15.06.2022.
- (e) Both the parties are at liberty to advance their oral submissions on the above mentioned two issues which shall be decided peremptorily in the light of law laid down by the Hon'ble Supreme Court in the case of *Indian Iron & Steel Co., Ltd. Vs Their Workmen*, (1958 SCR 667), *Sasa Musa Sugar Works Vs. Shobрати Khan*(1959 II LLJ 388) and *Workmen Of Motipur Sugar Factory Vs. Motipur Sugar Factory* (1965 AIR 1803).
- (f) Since it is now settled that additional oral evidence while deciding the above stated two issues is not required as the Labour Court has to only peruse the record and proceedings of

the enquiry and decide whether violation of principles of natural justice emerges from the record and whether the findings recorded by the enquiry officer based on the evidence on record, appear to be perverse, there shall be no recording of oral evidence.

- (g) After the Part-I award is delivered, the Labor Court would follow the due procedure of law, subject to the rights of the parties who may be aggrieved by the Part-I award.
- (h) It is expected that Reference (IDA) No.69/2017 would be decided on or before 31.12.2023.
- (i) Needless to state, in the light of the law laid down by the Hon'ble Supreme Court (Five Judges Bench) in *Karnataka State Road Transport Corporation Vs. Lakshmidevamma, 2001 II CLR 640*, if the enquiry is vitiated for any reason whatsoever and if the employer has reserved its right to conduct a de novo inquiry before the Labour Court, it is expected that the reference Court would follow the due procedure laid down in the law.

(RAVINDRA V. GHUGE, J.)