

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4203 OF 2021

SHIV CONSTRUCTION THROUGH PROPRIETOR
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri A.S. Kakade
AGP for Respondent 1 : Shri P.K. Lakhotiya
Advocate for Respondents 2 and 3 : Shri P.A. Pisal
Advocate for Respondent 9 : Shri Y.B. Bolkar h/f Shri S.R.
Zambare

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CORAM : RAVINDRA V. GHUGE
&
S.G. DIGE, JJ.

DATE :- 28th March, 2022

Per Court :-

1. On 09.03.2021, this Court passed the following
order :-

- “1. We will not entertain the writ petition, if the amount claimed by the petitioner is disputed by the respondents. It is only if the amount claimed by the petitioner is undisputed, then only the petition would be considered.
2. Issue notice to respondents, returnable on 08.06.2021.
3. The learned AGP waives service of notice for respondent No.1.”

2. This Bench had, therefore, made it clear on

09.03.2021 that if the amount claimed by the petitioner is disputed by the respondents, we would not entertain the petition.

3. The learned advocate for the petitioner submits that the disciplinary proceedings were initiated against respondent No.9, the then Gramsevak. The action is yet to be taken. We find that the notice issued to respondent No.9 is dated 16.11.2021. Considering the judgment in the case of ***Kulwant Singh Gill vs. State of Punjab, 1991 Supp (1) SCC 504***, the employer has to conduct the disciplinary proceedings in the nature of departmental enquiry if major punishment is to be awarded. We would not expect the authorities to rush through the departmental proceedings since a definite procedure is required to be followed.

4. The Honourable Supreme Court has recently concluded in ***Union of India vs. Puna Hinda, (2021) 10 SCC 690***, in paragraph 24 as under :-

“24. *Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallized. Therefore, in the absence of any acceptance of joint Survey Report*

by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e., arbitration and not by the Writ Court as it does not have the expertise in respect of measurements or construction of roads.”

5. It is apparent that in the present case, the issue brought before us is purely of contractual nature in the field of private law. We are, therefore, not inclined to consider the disputed questions before us in this petition.

6. This Writ Petition is, therefore, dismissed, leaving the petitioner at liberty to avail of the remedy as may be permissible in law.

kps (S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)