

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7447 OF 2021
WITH
CIVIL APPLICATION NO. 8121 OF 2021
IN
WRIT PETITION NO. 7447 OF 2021

1. The Managing Director
The Maharashtra State Co-operative
Marketing Federation Ltd, Mumbai-400009.
2. The Factory Manager
Vaibhav Pashu Khadya Karkhana
Bor Vihir, Dhule, Tq. & Dist. Dhule. ...Petitioners

VERSUS

Shaukat Khan s/o Ahmad Khan Pathan
Age- 61 years, Occ- Service,
R/o. Shantinagar behind 'Santecas'
Company, Aurangabad Road,
Jalna, Tq. & Dist. Jalna. ...Respondent

Mr. D.N. Suryawanshi, Advocate for the Petitioners.
Mr. P.P. Shahane, for Respondent.

.....
[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd AUGUST, 2022

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. Heard finally
with the consent of learned advocate for the parties.

2. This petition filed under Article 226 and 227 of
Constitution of India, impugns the order passed by the Labour
Court, Dhule, in IDA No. 14/2017.

3. Facts in nutshell leading to this petition are that, by order dated 26.08.2003, the petitioners terminated services of the respondent on the ground of absence. The termination order was challenged by the respondent in Complaint (ULP) No. 25/2005, before the Labour Court. Said complaint was allowed by order dated 26.07.2010 and respondent is directed to be reinstated with full back wages and consequential benefits. The judgment of the Labour Court was confirmed by this Court. Both these orders were challenged before the Apex Court by filing Civil Appeal No. 8253 of 2016 arising out of Special Leave Petition (Civil) No. 16945/2015. While disposing of said appeal, by order dated 22.08.2016 the Apex Court, observed: "*we therefore, set aside the award of back-wages and the workman is deemed to have notionally reinstated in service with effect from 26th July, 2010 i.e. the date of the order of the Labour Court which will entitled him to salary, etc. with effect from the said date i.e. 26th July, 2010 to the date of his superannuation.*"

4. By filing Contempt Petition No. 1704/2017 in Civil Appeal No. 8253/2016 in the Apex Court, the respondent made a grievance that order dated 28.08.2016 is not complied with by the petitioners. After hearing the said contempt proceeding, the

Apex Court disposed it of by granting liberty to the respondent to adopt appropriate remedy available to him.

5. Pursuant to the order of the Apex Court, respondent filed IDA No. 14/2017, under Section 33(C)(2) of the Industrial Disputes Act, 1947 (for short 'the said Act'), claiming amount of Rs. 17,28,099/- towards arrears of salary, senior grade salary, provident fund dues, medical allowances etc., plus interest at the rate of 9% per annum, from the date of judgment till realization of said amount. The calculations as to how the figure of Rs. 17,28,099/- was arrived at is given at annexure 'A' of the application.

6. The petitioners resisted the claim of the respondent by filing written statement contending that the petitioners have paid an amount of Rs. 12,22,144/- to the respondent vide cheque No. 298304 dated 28.10.2016, which has been accepted by the respondent, without any protest and there are no dues remaining as claimed by the respondent.

7. In support of his claim, respondent examined himself. The petitioners examined accountant in support of their

case. The Labour Court allowed the application filed by the respondent and directed the petitioners to pay amount of Rs. 17,28,099/- together with interest at the rate of 9% per annum from 26.07.2010 till 30.06.2015, which the date of superannuation of the respondent. This order is impugned by the petitioners in the present petition.

8. Heard the learned advocate for the petitioners and learned advocate for the respondent.

9. The learned advocate for the petitioners assailed the impugned order contending that the once the respondent accepted Rs. 12,22,144/-, without any protest, he is not entitled to claim more amount than that. He submits that exorbitant amount is claimed by the respondent which ought not to have been granted by the Labour Court. According to him, the Apex Court did not grant any interest and in that view of the matter, the Labour Court has committed an error in awarding interest at the rate of 9% per annum from 2010 to 2015, to the respondent. He strenuously urged that the impugned order cannot be sustained and same is liable to be quashed and set aside.

10. The learned advocate of the respondent on the other hand supported the impugned order. He submits that the witness of the petitioners has given vital admissions. The respondent has proved his entitlement to the said amount due to him hence the claim of the respondent has been allowed. He further submits that though the Apex Court did not award any interest, however, the respondent was required to file application for claiming arrears of salary, which were not paid to the respondent, though he was entitled to the same. The Labour Court was justified in awarding interest to the respondent. He therefore, submits that there is no substance in the petition and the petition be dismissed.

11. Heard the learned advocate for the petitioners and learned advocate for the respondent at length. Perused the grounds raised in the petition, documents placed on record as well as the original record.

12. Indisputably, in terms of the order passed by the Apex Court on 22.08.2016, the respondent is entitled for salary dues w.e.f. 26.07.2010 till 30.06.2015 i.e. the date of his superannuation. It is also not in dispute that the amount of Rs. 12,22,144/- is paid to the respondent on 28.10.2016.

13. In this backdrop, the respondent has filed application seeking arrears of Rs. 17,28,099/- plus interest thereon after deducting amount of Rs. 12,22,144/- received by him. In Annexure 'A' filed along with the application, respondent has given a detail breakup of due amounts claimed by him in the application.

14. The learned advocate for the petitioners strongly relied upon the admission given by the respondent that 'it is true that as per the direction of the Apex Court he has received amount from the petitioners', in support of their contention that the petitioners paid dues to the respondent and he is not entitled to claim any more. This admission cannot be read in isolation. The entire evidence of the respondent needs to be taken into consideration and appreciated. In the evidence the respondent has categorically stated that he is claiming amount of Rs 17,28,099/- as per the calculations given at Annexure 'A'. His evidence could not be shattered in the cross examination. On going through the evidence of petitioners witness accountant Shri. Bharat Sonwane, it is clear that, he has given vital admissions in the cross examination. He has admitted that he is not in a position to state as to how arrears of salary of

respondent were calculated at Rs. 12,22,144/-. He has admitted that three persons namely Ratan Chabukswar, Ramrao Thorat, Fulchand Punjaba joined duties along with respondent in federation on the same day. As per the direction of the Labour Court he has produced first page of their service book, which is received from the head office. He has further admitted that the salary being paid to all these three persons between July 2010 to June 2011 was Rs. 6100/-. He has further admitted that the salary claimed by the respondent between July-2011 to June-2015 is at par with Shri. Ramrao Thorat. He has further admitted that leave salary of Rs. 3,20,000/- claimed by the respondent is correct. He has admitted all the amounts demanded by the respondent towards due salary, senior grade salary, provident fund, medical allowances etc. He has further admitted that total of said amount comes to Rs. 29,50,243/- and after deducting amount paid by the petitioners i.e. Rs. 12,22,144/-, the respondent is entitled to Rs. 17,28,099/-. He has also admitted that all these amounts claimed by the respondent were same, which were paid to the other employee/colleagues of the respondent by federation.

15. On careful appreciation of evidence brought on record by the parties, this Court is of the considered view that the Labour Court is justified in allowing the application filed by the respondent. The Labour Court has rightly accepted the calculations given by the respondent. The evidence brought on record is properly appreciated by the Labour Court and there is no illegality or perversity in the order impugned in the present writ petition. The interest rate awarded by the Labour Court while allowing the application at the rate of 9% per annum, is however, on the higher side.

16. Though, in the first order dated 22.08.2016, there is no reference of interest by the Apex Court, while disposing of the contempt proceeding, liberty was granted to the respondent to adopt appropriate legal procedure for claiming his dues. In that view of the matter, respondent is entitled to claim interest on his dues unpaid to him as in spite of directions by the Apex Court, the dues were not paid to him by the petitioners. In the facts of this case, in my opinion, following order would meet the ends of justice.

ORDER

i) The writ petition is allowed.

- ii) The impugned order dated 10.02.2020 passed by the Labour Court, Dhule, in IDA No. 14/2017 is modified only to the extent that the petitioners shall pay interest at the rate of 4% per annum for the period from 26.07.2010 to 30.06.2015, instead of interest awarded at the rate 9% per annum by the Labour Court. Except this modification, rest of the judgment is maintained.
- iii) Amount of Rs. 5,05,955/-, deposited by the petitioner in this Court shall be paid to the respondent along with accrued interest. In that view of the matter, Civil Application No. 8121/2021 stands disposed of.

Rule is made absolute in the aforesaid terms.

[NITIN B. SURYAWANSHI, J.]