

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

WRIT PETITION NO.5085/2016

Shreepad s/o Dattopant Joshi and another
Vs.

The Superintending Engineer, Mechanical Circle, Irrigation Dept., Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri J.L. Bhoot, Advocate for petitioners.
Shri Amit Madiwale, AGP for respondent(s)/State.

CORAM : AMIT BORKAR, J.

DATE : SEPTEMBER 12, 2022.

The petitioner is challenging the judgment and order by the learned Member, Industrial Court, Nagpur Bench, Nagpur dismissing the complaint mainly on two grounds; (1) that the principle of *res judicata* bars the complaint, and (2) that the rights of the petitioner are governed by the provisions of Maharashtra Civil Services Rules (for short, 'MCSR') therefore the complaint is not maintainable.

2. Insofar as a point of *res judicata* is concerned, the Advocate for the petitioner invited my attention to paragraph 1 of the communication dated 05.05.2008, wherein the respondents have stated that office order no.8/1984 was issued by respondent no.1 on 06.05.1985. The earlier complaint was filed in January 1985. Therefore, the cause of action seeking relief in relation to the communication dated 06.05.1985 accrued after filing the complaint; therefore Industrial Court was justified in dismissing the complaint on the ground of *res judicata*.

3. Insofar as the next for dismissal of a complaint is that the provisions of MCSR apply to the petitioner and therefore the complaint is not maintainable is concerned, the Advocate for the petitioner placed reliance upon the provisions of Industrial Disputes Act and Kalelkar Award passed under Section 13 of the Industrial Disputes Act. According to him, therefore, the petitioner's rights would be governed by the provisions of the Industrial Disputes Act. Therefore, provisions of MCSR are not applicable, and complaint enforcing rights under provisions of the Industrial Disputes Act is being enforced by filing a complaint before the Industrial Court. Therefore, the complaint before the Industrial Court seeking enforcement of the Kalelkar Award is maintainable.

4. In my opinion, *prima facie*, the petitioner appears correct that the rights sought to be enforced out of the Industrial Disputes Act. Therefore the Industrial Court needed to consider the rights of the petitioner as pleaded by the petitioner.

5. The Advocate for the petitioner invited my attention to Government Circular dated 18.03.2008, which conferred pay scale to an employee according to designation as per work. In addition, he invited my attention to serial no.77 of Government Circular dated 18.03.2008 to urge that respondent no.1 had recognized the petitioner serving as a

'clerk' and, therefore, he was entitled to relief from the Industrial Court.

6. On perusal of the judgment of the Industrial Court, it appears that the Industrial Court has misconstrued the Government Circular dated 18.03.2008.

7. Learned AGP invited my attention to the oral evidence and, in particular, cross-examination. According to the learned AGP, the petitioner admits that he was working as a 'helper'.

8. On perusal of the Government Circular and overall view of the matter, it appears the Industrial Court has misconstrued the material document in the form of the Government Circular. However, the said document has to be considered in the light of oral evidence of the petitioner. Therefore the Industrial Court needs to reconsider the matter afresh in accordance with the law. I, therefore, pass the following order:

i. The impugned judgment and order passed by the learned Incharge Member, Industrial Court, Nagpur Bench, Nagpur dated 11.08.2015 in Compliant (ULP) No.590/2002 is quashed and set aside.

ii. The proceeding is remanded back to the learned Industrial Court, Nagpur Bench, Nagpur, for decision afresh.

iii. Because the complaint was filed in 2002, the learned Industrial Court is requested to decide the complaint within six months from the parties' appearance date.

iv. The parties shall appear before the Industrial Court, Nagpur Bench, Nagpur, on 26.09.2022 at 11:00 a.m.

The writ petition stands disposed of in the above terms. Pending civil application(s), if any, stand(s) disposed of. No costs.

JUDGE

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