

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.485 OF 1995
WITH
CIVIL APPLICATION NO.12916 OF 2022
IN SECOND APPEAL NO.485 OF 1995

Nanded Municipal Council,
Nanded, through its
Chief Officer.

... **Appellant.**

Versus

1. Bhagwan S/o Ganoji More,
Age 28 years.
2. Khandu Dipaji Tate,
Age 25 years.
3. Mesaram Nemaji Sathe – **Abated.**
4. Madhukar Hari Nandnaware – **Dismissed.**
5. Maroti Ganpati Waghmare,
Age 22 years.
6. Gautam Datta Gawale,
Age 22 years.
7. Sudam Babarao Pawale,
Age 25 years.
8. Prabhu Kondiba Bansode,
Age 25 years.
9. Jyotiba Deorao Jetihor,
Age 25 years.
10. Prakash Hiranman Waghmare,
Age 22 years.
11. Suresh Kondiba Sonwane,
Age 20 years.

12. Sanjay Irabaji Taru,
Age 21 years.
13. Kachru Mahajan Bulade,
Age 22 years.
14. Tulsiram Tukaram Aousaramale,
Age major.
15. Ananda Tukaram Pawar – **Dismissed**.
16. Suresh Bhujanga – **Dismissed**.
17. Kerba Bhujanga – **Dismissed**.
18. Kerba Sambhaji – **Dismissed**.
19. Goutam Kachru Pandit,
Age 23 years.
20. Shankar Rama Gudewar,
Age 24 years.
21. Prakash Digamber Waghmare – **Dismissed**.
22. Waghoji Chandoji Dhongade,
Age 21 years.
23. Bhagwan Shankar – **Dismissed**.
24. Pathan Kazam Ali – **Dismissed**.
25. Babu Hari Kamle,
Age 23 years.
26. Venkati Hari Kamble,
Age 25 years.
27. Nivariti Dhondiba Bukatare,
Age major.
28. Bansi Hari Gaikwad,
Age 28 years.

29. Laxman Nawaji Megare,
Age major.
30. Bhujanga Navaji Metengade,
Age major.
31. Raju Kishan Bokefod,
Age major.
32. Kishan Kondiba Sonsale,
Age 23 years.
33. Karmveer Nanuram Dulagarh – **Abated**.
34. Pandu Yeshwant Sabale,
Age 24 years.
35. Kachru Vithal Kamble,
Age 26 years.
36. Namdeo Nunjaji Gajabhare,
Age 25 years.
37. Bhimrao Kamble,
Age 27 years.
38. Prabhu Kerba Jondhale,
Age 28 years.
39. Zailsingh Lahana,
Age 28 years.
40. Prakash Jalba Kamble,
Age 25 years.
41. Ramesh Santaram More,
Age 22 years.
42. Ananda Shekoba Zadate,
Age 23 years.
43. Sambha Nagorao Pawale,
age 24 years.

44. Balaji Shankar Khirade,
Age 23 years.
45. Yeshwant Hari Athewale,
Age 24 years.
46. Gangadhar Datta Sontakke – **Abated**.
47. Sudhakar Dagadu Nilewar,
Age 24 years.
48. Syed Hamid Syed Maheboob,
Age 27 years.
49. Nanded Nagar Palika Kamgar Union,
Somesh Compound, Nanded through its
General Secretary, Nazir Ahmed,
Baba s/o Mohd. Ismail.

Respondent Nos.1 to 48 to be served
through respondent No.49. ... **Respondents**.

...
Advocate for Appellant : Mr. Mrigesh D. Narwadkar.
Advocate for Respondent Nos.2, 5, 22, 32, 40, 43, 44 : Mr. P. G.
Godhamgaonkar.
...

CORAM : S. G. MEHARE, J.

RESERVED ON : 14.09.2023
PRONOUNCED ON : 29.11.2023.

JUDGMENT :-

1. The Nanded Municipal Council, Nanded impugned the judgment and decree of learned Joint Civil Judge Junior Division, Nanded passed in Regular Civil Suit No.774 of 1986, dated 02.04.1987 and the judgment and decree of the learned

Additional District Judge, Nanded passed in Regular Civil Appeal No.123 of 1987, dated 03.02.1995.

2. The appellant would be referred to as "defendant" and respondents would be referred to as "plaintiffs", for the sake of convenience.

3. The plaintiffs had filed the suit for perpetual injunction restraining the Defendant from appointing Class-IV employees without first appointing them in service as labourers. The plaintiffs were Class-IV employees. The plaintiff Nos.1 to 23 have served with the Defendant in its Sanitation Department. Plaintiff Nos.24 to 39 have served in the Water Supply Department. Plaintiff Nos.40 to 47 have served in the Drainage Department. They had served with the Defendant for about nine months, a year or so. Plaintiff No.48 is a registered trade union of employees of the Defendant and has represented hundreds of grievances of the labourers and employees of the Defendant before the Defendant, the Labour Officer, the Assistant Commissioner of Labour, the Labour Court, etc. The plaintiffs were employed on a daily rate basis. However, the Defendant discharged plaintiff Nos.1 to 23 on 23.09.1986 and plaintiff Nos.24 to 27 on 30.06.1986 from the

services. Those posts were permanent. However, the Defendant is discharging them from service, employing new workers. Such is an unfair labour practice, and the Defendant was not entitled to discharge labourers in such an illegal way. They had made the representation for their continuity in the services. But, the Defendant did not pay heed. They had submitted representation before the Assistant Commissioner of Labour, Nanded and a settlement was arrived at between the defendant and its daily rated workers on 14.01.1980 to the effect that the daily rated workers with their permanent appointment with the Defendant. Similar was the settlement in a subsequent compromise dated 09.01.1984 between the workers and the Defendant. However, they were not confirmed. They have been deprived of benefits like regular pay scale, leave, medical benefits, gratuity, provident fund, etc. The plaintiffs were discharged without notice and order. On 24.09.1986, the Defendant passed a resolution for the appointment of fifty labourers. The Defendant had caused injustice upon the plaintiffs. Hence, they prayed to issue the injunction restraining it from appointing Class-IV labourers without first appointing them in service.

4. The Defendant had contested the temporary injunction. However, did not file a written statement. Hence, the learned Trial Court decreed the suit under Order VIII Rule 10 of the Civil Procedure Code. The Defendant had impugned the said order before the learned Additional District Judge, Nanded, with an application for condonation of delay. The learned Additional District Judge, by the order impugned before this Court, dismissed the appeal, holding that there was no ground either to remand the suit or to allow the appeal on merits mainly, because the allegations of the plaintiffs were not at all challenged by the Defendant nor there was any good ground either to disbelieve or discard them.

5. The appeal was admitted on 29.04.2004. However, the learned counsel for the appellant placed on record the proposed substantial questions of law involved in the appeal on 07.09.2023. It has been made a part of the appeal memo.

6. Heard the respective learned counsels. The entire appeal revolves around the jurisdiction of the Civil Court and the tenability of the suit before the Civil Court. Hence, the following substantial questions have been formulated.

(i) Does the Civil Court had jurisdiction to entertain the suit as presented by the plaintiffs?

(ii) Can the Civil Court pass a decree under Order VIII Rule 10 of the Civil Procedure Code in every case?

(iii) Were the plaintiffs entitled to the decree as prayed in view of the facts of the application for temporary injunction rejected way back in 1987?

7. Learned counsel for the appellant submits that the temporary injunction application filed by the plaintiffs was rejected long back. However, subsequent to that, the matter remained pending. Hence, the written statement could not be filed. He would submit that before the First Appellate Court, a specific ground was raised that considering the nature of the dispute and their relationship was employer and employee, the Trial Court did not justify passing the judgment and decree. However, the Court did not consider the question of jurisdiction of the Civil Court and erroneously dismissed the appeal. He also submitted that considering the plaint, the suit was liable to be dismissed in Order VII Rule 11(d) of the Civil Procedure Code as the Industrial Disputes Act barred the suit. Though the decree was passed, it was inexecutable, as it was null and void for the reason that it was not passed by the competent Court of law. He also argued that the reliefs sought

were not legal. The employees cannot force the employer to re-appoint them. They were the contractual labourers. The Municipal Corporation never promises them to continue and grants them permanency in the job. The due procedure was required to be followed for the appointment under the service law. The plaintiffs knew well that they were temporary employees, and the employer gave them no assurance. To bolster his argument, he relied on the various case laws. He prayed to allow the appeal and reject the plaint under Order VII Rule 11(d) of the Civil Procedure Code.

8. Per contra, the learned counsel Mr. Godhamgaonkar for respondent Nos.2, 5, 22, 32, 40, 43 and 44, has vehemently argued that it was purely a civil dispute. The employer did not perform his promises. Hence, the civil Court has jurisdiction to entertain the suit. Few of the employees were appointed, and the present respondents were not appointed. This is discrimination; therefore, under the principle of equity and equality, the plaintiffs were entitled to be appointed first, instead of appointing the new employees in the said process. He would also submit that many of the employees withdrew their claims. Relying on case laws, he would submit that the

impugned judgments and decrees are legally correct and proper. He prayed to dismiss the second appeal.

9. The plaint averments reveal that the plaintiffs had admitted the relationship as employer and employee. They were Class IV employees in different sections of the Municipal Corporation, i.e., the Defendant. They also pleaded that the Defendant was indulging in an unfair labour practices. They also pleaded that they had made the representation before the Assistant Labour Commissioner, and some compromise was arrived. The root question is whether the Civil Court or the Industrial Court would entertain any dispute between the employer and employee of the Municipal Corporation.

10. The learned counsel for the appellant relied on the case of *Rajasthan SRTC and others Vs. Khadarmal ; (2006) 1 SCC 59, Chandrakant Tukaram Nikam and others Vs. Municipal Corporation of Ahmedabad and another ; (2002) 2 Supreme Court Cases 542.*

11. The case of *Chandrakant (cited supra)* was against the Municipal Corporation. In the said case, the employees were terminated. The question before the Court was whether such a dispute was an industrial or civil dispute. The Hon'ble Supreme

Court, on similar facts,, has referred to the case of *Rajasthan SRTC (cited supra)* in which, in paragraph 36, the principles as regards the nature of dispute were summarized, which read thus :

"36. Applying the above principles, we must hold that the suits filed by the respondents in these appeals were not maintainable in law. Even so, the question is whether we should set aside the decrees passed in their favour by the civil courts. So far as Civil Appeal No.3100 of 1991 is concerned, this Court had, while granting leave [in S.L.P (C) No. 194 of 1991] ordered on 29-1-1991 that 'insofar as respondent is concerned, he (appellants' counsel) states that he will abide by the decree. Application for stay is rejected'. Therefore, there is no question of setting aside the decree concerned in this appeal. However, so far as the other appeals are concerned, the position is slightly different. In Civil Appeal No. 4948 of 1991 and in Civil Appeals Nos. 5386, 5387 of 1995 arising out of S.L.Ps (C) Nos. 10902 of 1992, 13152 and 10263 of 1993, not only is there no such condition but this Court had granted stay as prayed for by the appellant Corporation. In two other matters viz. in Civil Appeal No. 9314 of 1994 and Civil Appeal No. 5389 of 1995 arising out of S.L.P (C) No. 14169 of 1993 the only order is to issue notice. Having regard to the facts and circumstances of these matters, we modify the decrees in these matters (except the decree concerned in Civil Appeal No. 3100 of 1991) by

reducing the back wages to half. The decrees in all other respects are left undisturbed. These orders are made in view of the fact that the position of law was not clear until now and it cannot be said that the respondents had not acted bona fide in instituting the suits. Appeals disposed of accordingly."

4. It is submitted that all the suits in these matters were filed at a time when the position of law was not clear. It is submitted that therefore even in these cases the Court should not interfere with the decrees but may direct that there shall be no payment of back wages.

5. On behalf of the appellants reliance is placed on the second Rajasthan SRTC case and it is pointed out that the Court had, after considering the earlier judgment, concluded that the reinstatement cannot now be maintained and directed that the respondents shall not be allowed to continue in service any further. The Court has however held that the back wages which may have been paid are not to be recovered back but clarified that the respondents will not be entitled to any further emoluments or service benefits except the amount paid to them as back wages.

6. In our view, as the civil Court had no jurisdiction, the decrees which were passed have no force of law. They are accordingly set aside. In our view, there can be no direction to reinstate or to continue reinstatement. However, on the facts of these cases we also direct that if any back wages have been paid, they shall not be recovered but clarify that the respondents will not be entitled to any further emoluments or service benefits.

7. The appeals stand disposed of accordingly. There will be no order as to costs."

The Hon'ble Supreme Court held that the Industrial Forum adjudicates upon the dispute of illegal termination. The jurisdiction of the civil Court in such case is impliedly barred.

12. The Hon'ble Supreme Court in the case of ***The Corporation Of The City Vs. Its Employees; A.I.R. 1960 675*** held that the Water Works Department, Water Supply Department, Sanitation Department, Health Department (Sanitation) and Drainage Department are the 'industries' as defined under Section 2-A of the Industrial Disputes Act. No doubt, the labours are under the Industrial Disputes Act.

13. Per contra, the learned counsel for the respondents would rely on the case of ***The Premier Aotumobiles Ltd. Vs. Kamlakar Shantaram Wadke and other ; A.I.R. 1975 Supreme Court 2238***. He also referred to the judgment of ***Dhulabhai Vs. State of M.P ; A.I.R. 1969 Supreme Court 78***. He has vehemently argued that the employees were not permanent. It is a case of promissory estoppel. The defendants had promised the plaintiffs to appoint them against permanent posts. They had an experience, but suddenly, they were victimized, and

without any cause or justification, their services were terminated. To have employment for livelihood is a civil right. Therefore, the Civil Court has jurisdiction to entertain the suit filed by the plaintiffs.

14. In the case of *Premier Automobiles* (cited supra), the facts were that the employees from the motor production department had filed a suit before the City Civil Court in Bombay. The dispute was pertaining to the settlement arrived between the company and the Association Union. The first relief claimed in the said suit was that the settlement dated 09.01.1971 was not binding on the plaintiffs and other concerned daily rated and monthly rated workmen of the local production Department, who were not members of the association union. The second relief was sought for the decree of permanent injunction restraining the appellant/company from enforcing or implementing the terms of the impugned settlement dated 09.01.1971. The defendant company had challenged the jurisdiction of the Civil Court to entertain the suit in relation to the dispute which was an industrial dispute and further accepted that in view of the matter, no decree for permanent injunction would be made. On these premise, the Civil Court held that the Court had jurisdiction to try the suit

and as it was the suit was of a civil nature for enforcement of rights of common and general law and consequently there was no question of the reliefs being claimed under the Industrial Disputes Act and granted the conditional decree of injunction restraining the appellant/company from enforcing or implementing the terms of agreement of 09.01.1971 against workmen of its Motor Production Department who were not members of the Association Union. On the facts of the case, the Hon'ble Supreme Court held that the Civil Court has jurisdiction to try the suit. In fact, this case does not support the plaintiffs. As far as the ratio laid down in the case of *Dhulabhai*, it was discussed in the case of *Chandrkant (cited supra)* and finally held that the dispute of employer and employee about the termination of service will be an industrial dispute within the meaning of Section 2(k) and Section 17 of the Industrial Disputes Act.

15. Considering the ratio laid down by the Hon'ble Supreme Court and admitted relationship of employer and employee and the departments in which the plaintiffs were allegedly working have been held an industry, the Court is of the view that the jurisdiction of the Civil Court was impliedly barred and the suit was not tenable before the Civil Court.

16. The next question that has been raised by the learned counsel for the appellant is that in every case, the Court shall not proceed to pass a judgment and decree under Order VIII Rule 10 of the C.P.C. He also submits that it is the duty of the Court to examine the plaint before proceeding under Order VIII Rule 10 of the C.P.C.

17. To bolster his argument, he relied on the case of *C. N. Ramappa Gowda Vs. C. C. Chandragowda (Dead) by L.Rs. and another; 2012 A.I.R. Supreme Court 2528*. In this case, one of the questions before the Supreme Court was whether the Trial Court before whom the defendants failed to file a written statement in spite of repeated opportunities could straightway pass a decree in favour of the plaintiff without entering into the merits of the plaintiff's case and without directing the plaintiff to lead evidence in support of his case and appreciating any evidence or in spite of the absence of written statement, the trial court ought to try the suit critically appreciating the merits of the plaintiff's case directing the plaintiff to adduce evidence in support of its own case examining the weight of the evidence led by the plaintiff?

18. The above case was a suit for partition. The Hon'ble Apex Court, in the facts of the case, observed in the middle of paragraph No.13 that "even if the case of the plaintiff/appellant was correct, it was of vital importance for the trial Court to scrutinize the evidence that the property sought to be partitioned was joint in nature. But the Trial Court seems to have relied upon the case of the plaintiff merely placing reliance on the affidavit filed by the plaintiff, which was fit to be tested on at least a shred of some documentary evidence even if it were by way of an *ex parte* assertion. Reliance placed on the affidavit in a blindfold manner by the trial court merely on the ground that the Defendant had failed to file a written statement would amount to punitive treatment on the suit, and the resultant decree would amount to a decree which would be nothing short of a decree which is penal in nature".

19. Similarly, he relied on the case of ***Shantilal Gulabchand Mutha Vs. Tata Engineering and Locomotive Co. Ltd. and another; 2013 (2) Mh.L.J. 579***. In this case, also the Hon'ble Supreme Court held that it appears to be a settled legal proposition that the relief under Order VIII Rule 10 of the C.P.C. is discretionary, and the Court has to be more cautious

while exercising such power where Defendant fails to file the written statement. Even in such circumstances, the Court must be satisfied that there is no fact which needs to be proved in spite of deemed admission by the Defendant, and the Court must give reasons or passing such judgment; however, short it be, but by reading the judgment, a party must understand what were the facts and circumstances on the basis of which the Court must proceed, and under what reasoning the suit has been decreed. It has also been observed that the trial court failed to meet the parameters laid down by this Court to proceed under Order VIII Rule 10 of C.P.C. In the said case, the case of *Balraj Taneja and another Vs. Sunil Madan and another; 1999 (4) R.C.R. (Civil) 438* was referred to. In the said case, it was held that even in such fact-situation, the Court should not act blindly on the averments made in the plaint merely because the written statement has not been filed by the Defendant traversing the facts set out by the plaintiff therein. Where the written statement has not been filed by Defendant, the Court should be little cautious in proceeding under Order VIII Rule 10 of C.P.C. Before passing the judgment against the Defendant, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring

him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied, and there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the Defendant who failed to file a written statement. However, if the plaint itself indicates that there are disputed questions of facts involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy.

20. The facts of this case were admitted that the appellant opposed the temporary injunction application, and it was rejected on merits. The plaint averments were clearly indicating that there were disputed facts. The plaintiffs had a case that the Defendant did not follow the promise to continue them in service and they were illegally terminated. Apart from this, a specific pleading was made in the plaint that it was an unfair labour practice. Was it really an unfair labour practice? The question of fact needed to be proved. However, the learned trial court, without examining any of the plaintiffs or discussing the documents placed on record, has directly

pronounced the judgment under Order VIII Rule 5 of the C.P.C. The facts of the plaintiffs' case clearly indicate the disputed facts. In such circumstances, the learned trial court ought to have asked the plaintiffs to prove the facts. Unfortunately, the principles regarding proceeding *ex parte* and passing judgment under Order VIII Rule 5, read with Order VIII Rule 10 of C.P.C. appear to have not been correctly followed. Similarly, the First Appellate Court also did not pay attention towards the legal provisions and mechanically affirmed the judgment of the trial court.

21. Order VII Rule 11 of the C.P.C. empowers the Court to reject the suit if the suit is barred by other law. It is the duty of the Court under Order VII to examine a plaint before issuing summonses and to ascertain whether the plaintiff has pleaded a cause of action and whether the plaint should be rejected, returned or amended. Order VII does not restrict the Court or put limitation on the exercise of powers to examine the plaint. While deciding whether to accept or to reject the plaint only the averments in the plaint are to be seen and not the written statement. The jurisdiction of the Court is to be determined from the plaint and not from the written statement.

22. In a plaintiff's plaint there were specific pleadings that the defendants had played unfair labour practice; the Court ought to have considered whether a civil court would decide such a dispute. The averments of the plaint also indicate that it was a dispute between employer and employee. The plaintiffs were expecting the service benefits and permanency in the job. They had a specific case of illegal termination of services. The sufficient material was before the trial court to examine its jurisdiction. However, the learned Court of first instance did not pay attention to its duties to examine the plaint as provided under Order VII Rule 11 of the C.P.C. and mechanically proceeded ahead in the matter under Order VIII Rule 5 of C.P.C.

23. This Court has held above that in the fact situation, the civil Court had no jurisdiction to entertain the suit as the provisions of Industrial Disputes Act impliedly barred its jurisdiction. Therefore, the plaint is liable to be dismissed.

24. In view of the above discussion, the first substantial question of law is answered that the civil suit was not tenable as the Civil Court has no jurisdiction to entertain the suit in the nature of the claim and the plaint presented.

25. **As to question No.2** :- In the fact-situation and pleadings in the plaint, the trial court was to ask the plaintiffs to prove the case and not to proceed without proof of the fact under Order VIII Rule 5 of C.P.C.

26. **As to question No.3** :- The plaint averments were clear that it was a dispute between employer and employee and a case of unfair labour practice. Therefore, plaint was liable to be rejected under Order VII Rule 11(d) of C.P.C. as the provisions of the Industrial Disputes Act barred the suit.

27. On examining the legal issues and factual aspects involved in the case, the Court concludes that the impugned judgments and decrees are without jurisdiction; hence, null and void and not executable, therefore, liable to be quashed and set aside.

ORDER

- (i) The second appeal is allowed.
- (ii) The judgment and decree of the learned Joint Civil Judge Junior Division, Nanded passed in Regular Civil Suit No.774 of 1986, dated 02.04.1987 and judgment and decree of the learned Additional District Judge, Nanded in Regular Civil Appeal No.123 of 1987, dated 03.02.1995, are set aside.

- (iii) The complaint stands rejected under Order VII Rule 11 (d) of C.P.C.
- (iv) No order as to costs.
- (v) R and P be returned to the trial court.
- (vi) Civil Application stands disposed of accordingly.

(S. G. MEHARE, J.)

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