IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 739 OF 2016

Suryakant Balkrishna Shinde ..Petitioner
Vs.
Ghatge Patil Transports Ltd. ...Respondent

Mr. R. D. Soni with Mr. V. R. Kasale i/b. Ram & Company for Petitioner.
Mr. Kunal Bhanage for Respondent.

CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 14, 2023

P.C. :-

1. This petition filed under Article 227 of the Constitution challenges an order dated 12 March 2014 rendered by the Labour Court-I, Kolhapur, whereby Reference IDA No.161 of 2009 as made to the Labour Court by the Deputy Commissioner of Labour, Pune under Section 10(1)(c) read with Section 12(5) and 39 of the Industrial Disputes Act, 1947 (for short '**the ID Act**') has been assailed. By the impugned order, such Reference has been partly allowed by the Labour Court with a direction to the respondent/employer that the employer shall award all pensionary benefits and legal dues, if any, to the petitioner. The operative part of the order reads thus:-

"ORDER
1) Reference is partly allowed.
2) First Party is hereby directed to award all pensionary benefits and legal dues if any to the second party.

3) No order as to costs.
4) Inform to the Government.
5) Award accordingly."

2. Some relevant facts are required to be noted:

The petitioner was in the employment of the respondent as a 'mechanic', from the year 1968. He was transferred from Kolhapur to Chennai-Punmalli by an order dated 9 October 1997 issued by the respondent. The petitioner complaining that such transfer being made by the respondent was not a part of conditions of service, approached the Industrial Court in Complaint (ULP) No.360 of 1997. In such circumstances, he did not join the place of transfer. He was, therefore, issued a chargesheet dated 16 July 2004. The chargesheet was replied by the petitioner by his reply dated 27 July 2004. On such charges, an enquiry was conducted culminating into an order dated 15 December 2004, being passed terminating his services. In these circumstances, the petitioner approached the Deputy Commissioner of Labour wherein the petitioner demanded for a reference to be made for his reinstatement, and continuity of service with full back wages. Accordingly, as noted above a reference was made. Consequent to the reference being made, the petitioner filed his statement of claim. His grievance before the Labour Court was to the effect that the departmental enquiry conducted against him was held without following the principles of natural justice and hence, relief be granted to him of reinstatement with all consequential benefits as prayed for. As noted above, the learned Labour Judge considering the rival contentions partly allowed the reference, thereby directing that the petitioner be awarded all pensionary benefits and legal dues, if any. It is required to be observed that the respondent has not assailed the impugned order passed by the Labour Court and consequently, it has accepted that the respondent is liable to pay the petitioner all pensionary benefits and legal dues.

3. This petition was filed on 11 June 2015 when as and by way of interim relief the impugned award was not stayed. When the proceedings were listed before the Co-ordinate Bench of this Court on 25 April 2016, a statement on behalf of the respondent came to be recorded, that by the adjourned date of hearing i.e. 13 June 2016, the respondent shall communicate the amount of dues, which the respondent shall pay to the petitioner in accordance with the award. Unfortunately, the same was never communicated despite a statement being made before this Court. It appears that the respondent discharged the earlier Advocate who was appearing in the present proceedings.

4. It is on the above backdrop that the petition was listed before this Court on 3 January 2023 when a statement was made on behalf of the respondent that the amount is being calculated and the same would be disbursed to the petitioner on or before the adjourned date of hearing. The Court also observed that the impugned order itself was of 12 March 2014. It was almost 8 years that the petitioner was waiting for disbursal of the said amount and considering such situation, the respondent would not delay the matter further. It would be appropriate to note the order dated 3 January 2023 which reads thus:-

> "1. By the impugned order dated 12 March, 2014, the reference in question (Reference IDA No. 161 of 2009) was partly allowed and the respondent no.1/employer was directed to award all pensionary benefits and legal dues, if any, to the petitioner.
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> 2. Mr. Bhanage, learned counsel for the respondent, on instructions, submits that the amount is being calculated and the same shall be disbursed to the petitioner on or before the adjourned date of hearing.
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> 3. The impugned order itself is dated 12 March, 2014. It is almost about 8 years that the petitioner is waiting the disbursal of the said amount. Considering this situation, the respondent would not delay the matter any further.
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> 4. List the petition **First on Board** on **10 January, 2023** so that entire amounts are received by the petitioner before the adjourned date of hearing.
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> 5. Alongwith payment of the amount, the respondent is directed to furnish calculation of the said amount to the petitioner. Copy of the same be also forwarded to Mr. Soni, learned counsel for the petitioner.
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> 6. Parties shall act on an authenticated copy of this order."

5. As the order dated 3 January 2023 was not complied, this Court on 10 January 2023 passed the following order:-

> "1. Stand over to **13 January, 2023** on the supplementary board.
> 2. Although the matter was adjourned to enable Mr. Bhanage, learned counsel for the respondent to take instructions in regard to the settlement, what has been tendered by Mr. Bhanage and appears to be on improper instructions, a letter dated 27 April, 2016 as addressed by the respondent to the petitioner would in no manner in compliance of the discussion which had taken place before the Court on the earlier occasion. Let Mr. Bhanage take proper instructions and approach his clients intend to take in regard to the settlement proposal.
> 3. In the meantime, in regard to the pensionary benefits if any formalities are required to be undertaken by the petitioner, let the same be informed in writing to Mr. Soni, learned counsel for the petitioner."

6. However, despite repeated orders as noted above, the respondent did not instruct Mr. Bhange with the proper calculation, as also the calculations which were furnished by the petitioner, as per letter dated 16 December 2014 were not disputed. The Court on 13 January 2023 has passed the following order:

> 1. The petitioner was employed as an Auto Repair Operator/mechanic with the respondent. He has been made to run from pillar to post to get his terminal dues. The initial proceedings before the Labour Court are of the year 1997. All these have culminated into a final award dated 12 March, 2014 passed by the Presiding officer, Labour Court, Kolhapur, who granted the following relief in favour of the petitioner:
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> ***"O R D E R***
>
> > *1. Reference is partly allowed.*
> >
> > *2. First party is hereby directed to award all pensionary benefits and legal dues if any, to the second party.*
> >
> > *3. No order as to costs."*
>
> 2. The petitioner is aggrieved by the part reliefs not being granted. Be that as it may, the respondent/employer has not

assailed the said order passed by the Labour Court. It is almost about a period of 10 years the above order was passed. However, the petitioner has not received a penny so far. The petitioner had addressed a letter dated 16 December, 2014 to the respondent-employer requesting that as per the award, an amount of Rs.11,47,744/- plus the allowances and gratuity and the provident fund amounting to Rs.65,000/- be paid.

3. I have heard learned counsel for the parties on the earlier occasion when it was discussed that an amicable resolution on the limited dispute on disbursement of the amounts can be brought about. The Court had requested Mr. Bhanage, learned counsel for the respondent to furnish information to Mr. Soni, learned counsel for the petitioner in regard to the details of the amounts/arrears due and payable to the petitioner. It was expected that proper calculation would be made and would be furnished to the petitioner. However, Mr Bhanage was instructed by the respondent to handover to the Court a stale letter dated 27 April, 2016 addressed by the respondent to its advocate Mr. N.R. Patankar whereby what has been set out is some reference of service details and gratuity calculation of Rs.68,538/-. It was also stated that the respondent had paid one month's salary in lieu of notice period amounting to Rs.5532/-. Certainly such amounts are not in consonance with the amount awarded by the impugned order dated 12 March, 2014 and which has been accepted by the respondent.

4. In the above circumstances, there is no other alternative but to direct the respondent to deposit in this Court an amount of Rs. 11,47,744/- on or before the returnable date. In the event, the amount is not deposited within the stipulated time, the Court shall be constrained to pass further appropriate as may be permissible in law. All contentions of the parties are expressly kept open.

5. Needless to observe that once the amount is deposited, the parties can be heard if there is any minor difference in the quantum.

6. At this stage, it is stated that the gratuity amount of Rs.68,538/- was accepted by the petitioner and now the question is about the balance amount on which the parties would be heard on the adjourned date of hearing.

7. Stand over to 20 January, 2023 (H.O.B.).

7. On the earlier date of hearing i.e. on 20 January 2023 instead of complying with the order dated 13 January 2023, Mr.Bhange informed

the Court that the respondent was interested to assail the order dated 13 January 2023 passed by this Court before the Supreme Court and therefore, the respondent does not want to comply with the said order. The Court, hence, required to pass an order observing that such cannot be the approach of the respondent and more particularly when the dues are of the petitioner workman who was in the services of the respondent, and adjourned the proceeding to 25 January 2023. The order of this Court dated 20 January 2023 reads thus:-

> "1. It is informed by learned counsel for the respondent that the order dated 13 January, 2023 passed by this Court is intended to be challenged by the respondent and therefore, the respondent does not intend to comply with the said order. This cannot be the approach of the respondent and more particularly when the dues are of the petitioner who was a workman in the services of the respondent.
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> 2. In the circumstances, only as a matter of indulgence, time is extended to deposit the amount till 25 January, 2023. The petitioner is directed to place on record the details of the bank account/appropriate assets of the respondent on or before 25 January, 2023, so that appropriate orders can be passed.
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> 3. Parties to act on an authenticated copy of this order.
>
> 4. Stand over to **25 January, 2023 (H.O.B.)**.

8. Thereafter, the proceedings were listed before this Court on 31 January 2023 on which date the Court recorded as to what has transpired earlier and more particularly, as observed in the order dated 13 January 2023 and the compliance at least of the said order was required to be made by the respondent. The Court accordingly, was required to take further appropriate steps so as to seek compliance of such orders passed by the Court. It is also required to be noted that a Special Leave Petition was filed against the order dated 13 January 2023 which came to be rejected by the Supreme Court. In these circumstances, the Court had passed the following order directing the respondent to place on record an affidavit of disclosure as directed. The relevant extract of the said order reads thus:-

> 4. Mr.Soni, learned Counsel for the petitioner informs that the information only in regard to the names of the bank could be obtained, however, the details of the bank accounts could not be obtained so as to place on record of the Court.
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> 5. It also needs to be observed that a Special Leave Petition was filed against the order dated 13 January 2023 (supra) passed by this Court which is stated to be rejected by the Supreme Court. Thus, the situation which has arisen is that the orders of this Court dated 13 January 2023 necessarily are required to be complied. Till date, the order has not been complied.
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> 6. To enable the respondent now to comply with the order, as the Special Leave Petition is also dismissed, stand over to **7 February 2023. High On Board.**
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> 7. The respondent is also directed to place on record an affidavit of disclosure of movable and immovable assets as also all details of all the bank accounts, so that further appropriate orders can be passed. The respondent is also directed to state the names of the present Directors of the respondent as per the record with the Registrar of Companies alongwith their addresses. It is clarified that there shall not be any further indulgence."

9. Thereafter, despite the aforesaid categorical position, non compliance of the earlier orders by the respondent, as also its special leave petition being rejected, the respondent did not comply with the said orders of this Court in depositing the amounts, as directed. The proceedings were thereafter listed before this Court on 7 January 2023 when the Court in such circumstances was required to pass an order observing that the conduct of the respondent was in gross breach of the order dated 31 January 2023. Mr.Bhange was instructed to submit that his client was unable to fully comply with the order to deposit the entire amount of Rs.11,47,744/-. Mr.Bhange however, stated that he had received from his client a demand draft of Rs.4 lakhs, which he intended to deposit in the Court. The Court considering such situation and to enable a last opportunity to be granted to the respondent to comply with the binding orders passed by this Court, the respondent was directed to deposit a demand draft of 4 lakhs as also to deposit the balance amount in this Court by 2.30 p.m. on 8 February 2023 by an order dated 7 February 2023 which reads thus:-

> **1.** The conduct of the respondent is in gross breach of the order dated 31 January, 2023, in as much as Mr. Bhanage, learned counsel for the respondent submits that his client is unable to comply with the order to deposit entire amount of Rs.11,47,744/-. He states that what has been received by him from his client is a Demand Draft of Rs. 4 Lakhs, which he intends to deposit with the Registry.
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> **2.** It needs to be observed that the respondent by an order dated 13 January, 2023 passed by this Court was directed to deposit such amount. Such order was challenged by the respondent before the Supreme Court in Petition(s) for Special Leave to Appeal (C) No(s). 2071 of 2023 which came to be rejected vide an order dated 30 January, 2023. This fact was brought to the notice of this Court on 31 January, 2023 when a detailed order was passed directing the respondent to comply with the order dated 13 January, 2023. The respondent was further directed to place on record an affidavit of disclosure of

movable and immovable assets as also all details of all the bank accounts, so that further appropriate orders can be passed. The respondent was also directed to state the names of the present Directors of the respondent as per the record with the Registrar of Companies alongwith their addresses. It was also clarified that there would not be any further indulgence. The relevant paragraphs of the said order are required to be noted which read thus:-

> "3. Thus, when the proceedings were listed before this Court on 20 January 2023, it was informed by learned Counsel for the respondent that the order dated 13 January 2023 is intended to be challenged by the respondent and therefore, the respondent was not inclined to comply with the said order. The Court had observed that this could not be the approach of the respondent and more particularly, when it concerned the dues which were payable to the petitioner who was workman in the service of the respondent. Hence, only as a matter of indulgence, time to deposit the amount was extended upto 25 January 2023, as also the petitioner was directed to place on record the details of the bank account/appropriate assets of the respondent by way of affidavit.
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> 4. Mr.Soni, learned Counsel for the petitioner informs that the information only in regard to the names of the bank could be obtained, however, the details of the bank accounts could not be obtained so as to place on record of the Court.
>
> 5. It also needs to be observed that a Special Leave Petition was filed against the order dated 13 January 2023 (supra) passed by this Court which is stated to be rejected by the Supreme Court. **Thus, the situation which has arisen is that the orders of this Court dated 13 January 2023 necessarily are required to be complied. Till date, the order has not been complied.**
>
> **6. To enable the respondent now to comply with the order, as the Special Leave Petition is also dismissed, stand over to 7 February 2023. High On Board.**

> **7. The respondent is also directed to place on record an affidavit of disclosure of movable and immovable assets as also all details of all the bank accounts, so that further appropriate orders can be passed. The respondent is also directed to state the names of the present Directors of the respondent as per the record with the Registrar of Companies alongwith their addresses. It is clarified that there shall not be any further indulgence.**"
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> (emphasis supplied)

3. It certainly appears that there is no intention on the part of the respondent to take the order passed by this Court seriously. This is clear from two aspects. Firstly, what has been intended to be deposited is only an amount of Rs.4 Lakhs which is a meager part of the total amount. Secondly, in fact, if the order dated 13 January, 2023 is seen, such deposit was required to be made on or before 20 January, 2023. However, on the ground that a Special Leave Petition was filed, such amount was not deposited.

4. Thus, the situation today is of total non-compliance of the said orders of the Court for the second time. The orders of the Court cannot be taken so lightly by the respondent. This apart, there is no justifiable cause whatsoever has placed on record except oral request of Mr. Bhanage praying for any extension.

5. In these circumstances, the respondent is directed to deposit in this Court a Demand Draft of Rs. 4 Lakhs today and by 02.30 p.m. on 08 February, 2023 the respondent is directed to deposit the balance amount. Also the affidavit as directed in paragraph 7 of the order dated 31 January, 2023, needs to be placed on record.

6. It also needs to be observed that prima-facie looking at the conduct of the respondent, this is certainly a case of non-compliance of the orders passed by the Court and for which law would mandate appropriate orders to be passed against the respondent and its Directors for having acted in breach of the orders. If entire amount is not deposited by tomorrow as directed, appropriate orders as the law would require the Court to pass, would be required to be passed. It is clarified that the deposit of the amount can only be considered as a mitigating circumstance.

7. In the meantime, Mr. Soni, learned counsel for the

> petitioner states that he also has names of the Directors of the respondent. Let the petitioner also prepare an independent affidavit and place the same on record on the adjourned date of hearing.
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> **8.** At this stage, Mr. Bhanage has tendered a Demand Draft of Rs.4 Lakhs in the Court. The Sheristedar of this Court is directed to hand over the same to the Registrar (Judicial) who shall immediately deposit the Demand Draft.
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> **9.** Stand over to **08 February, 2023 at 02.30 p.m."**

10. Accordingly, the respondents have deposited an amount in two tranches, firstly an amount of Rs4 lakhs and secondly an amount of Rs.7,47,744/- which was recorded in the order dated 10 February 2023. It is on this backdrop, the proceedings are today before this Court.

11. Mr.Soni, learned Counsel for the petitioner has made submissions on the petition. He has urged that the impugned award is *per se* illegal and is required to be set aside for two basic reasons; firstly that there was no cause whatsoever for the respondent to initiate a departmental enquiry only on the ground that the petitioner had not joined the transferred place of service and thereafter to impose an *ex facie* disproportionate punishment of dismissal from service. Mr.Soni would submit that this more particularly when the respondent was aware that the petitioner had taken recourse to law by assailing the transfer orders issued to the petitioner by approaching the Industrial Court in a Complaint (ULP) No.360 of 1997. Mr.Soni has drawn the Court's attention to the points as set out in the impugned order to submit that the reference ought to have been fully allowed in favour of the petitioner by granting him reinstatement with continuity of service and full back-wages as surely seen from the cryptic reasons as set out in the impugned order. He submits that the punishment which was imposed was grossly disproportionate to the charges as levelled against the petitioner in the departmental proceedings. Mr.Soni has submitted that it is not disputed in any manner that the petitioner was serving as a mechanic throughout from his appointment in the year 1968 till his illegal termination, had an unblemished record of service. It is his submission that certainly this ought to have weighed with the Labour Court to grant reinstatement, as the misconduct was not a serious misconduct at all, and this more particularly, when the Labour Court in answering issue No.3 had observed that the punishment imposed by the respondent on the petitioner was not justified.

12. On the other hand Mr.Bhange, learned Counsel for the respondent has supported the impugned order. At the outset, he submits that the respondent has accepted the said order and the respondent is ready to comply with the orders awarding pensionary benefits and legal dues. He submits that no interference is called for in the impugned order under Article 227 of the Constitution.

13. Having heard learned Counsel for the parties and having perused the impugned order and the record, there is much substance in the contention as urged on behalf of Mr. Soni that insofar as the punishment which was awarded by the respondent is concerned, the same was ex-facie to disproportionate the gravity of the alleged misconduct levelled against the petitioner. However, the fact remains that by the time the adjudication of the reference took place, the petitioner had already attained the age of superannuation after 30 years of service with the respondent, hence the Labour Court in paragraph 10 of the impugned award has observed that the petitioner had also been paid the gratuity amount.

14. In the aforesaid facts and circumstances, Mr.Soni has also not disputed that it would be appropriate that all amounts which have become due and payable to the petitioner as per the impugned award ought to have been released in favour of the petitioner by the respondent. The respondent had not assailed the impugned award passed by the Labour Court and in fact, had accepted the award. He has submitted that therefore, for such reason, the Court was required to step in and the respondent is required to pay the entire amount of Rs.11,47,744/-, as noted above. His submission is that for all these years, the petitioner was required to suffer having not being paid his dues as also his pension, which had seriously affected the very livelihood and survival of the petitioner. It is his submission that the respondent despite the orders passed by this Court in the year 2016, has not made the calculation. It is urged that this Court hence ought to permit the petitioner to withdraw an amount of Rs.11,47,744/- deposited by the respondent in this Court by its earlier order. He submits that if the said amount would have been deposited earlier, from the year 2014 a substantial interest would have accrued on such amount. He has submitted that in that regard the petitioner would also take out a separate appropriate proceedings as also for any other legal dues ordered by the Labour Court in paragraph (2) of the operative part of the award.

15. Mr.Bhange has made an attempt to oppose the contentions urged by Mr.Soni. Mr.Bhange certainly could not justify that despite an opportunity being granted to the respondent, the respondent did not come forward to show the correct amount due and payable to the petitioner even as per the impugned award. There was also no dispute that from the year 2014, no pension amount was paid to the petitioner. Mr.Bhange is also not in a position to dispute the said position. For all these years, the petitioner has survived without receiving any monetary benefits from the respondent when there was no stay to the impugned award. He, however, would submit that the petitioner should be directed to approach the respondent alongwith the calculation. It is taken that all the submissions of Mr.Bhange are on instructions. Certainly, the tenor of the submissions of the respondent is neither acceptable looking at the conduct of the respondent nor it needs to be accepted. This considering that inspite of repeated orders of this Court, the petitioner was required to suffer without receiving any amount whatsoever from the respondent and which has certainly affected his livelihood.

16. In the aforesaid circumstances, in my opinion, interest of justice would be served, in permitting the petitioner to withdraw the amount deposited in the Court of Rs.11,47,744/- by the respondent and with a further direction to the respondent to disburse the petitioner all amounts which were actually due and payable as per the impugned award. The impugned award first awarded the pensionary benefits and secondly all legal dues. The respondent is now directed to separately calculate all the pensionary benefits as also legal dues as per the award and whatever amounts become due and payable to the respondent after adjusting an amount of Rs.11,47,744/- shall be paid. Let such amounts be informed to the petitioner within a period of six weeks. Insofar as such amounts are concerned, in the event the petitioner has any dispute in regard to the amount of dues that is calculated by the respondent which is payable as per the impugned award of the Labour Court, all contentions of the petitioner in that regard are required to be expressly kept open, as also that of the respondent, in the event there is any dispute in that regard. The petitioner is permitted to withdraw the amounts deposited by the respondent in this Court on furnishing an undertaking that in the event the amounts are in excess as directed by the Competent Court, the excess amount shall be refunded to the respondent. Office shall take immediate appropriate steps to disburse the amounts in favour of the petitioner. Accordingly, the petition is disposed of by the following orders :-

ORDER

i. The petitioner is permitted to withdraw an amount of Rs.11,47,744/- (Rs. Eleven Lakhs Forty Seven Thousand Seven Hundred Forty Four only) as deposited by the respondents in this Court on furnishing undertaking that in the event the amounts are in excess as directed by the competent Court, the excess amount shall be refunded to the respondent.

ii. Respondent shall furnish to the petitioner within a period of six weeks from today the entire calculations of the "pensionary benefits" and the "other legal dues" as payable to the petitioner with effect from the impugned award dated 12 March, 2014 passed by the Labour Court.

iii. In the event any dispute arises in regard to the calculations of the amount as may be furnished by the respondents, all remedies and contentions of the parties in that regard are expressly kept open.

iv. Office shall permit the petitioner to withdraw the amount of Rs.11,47,744/- as deposited by the respondents.

17. At this stage, Mr. Bhange would pray that these directions may be stayed. However, in the gross facts of the case, this cannot be stayed. The request of Mr. Bhange is rejected.

18. Sheristedar of this Court is directed to inform the Registrar Judicial the orders passed by this Court in the open Court, for permitting the petitioner to withdraw the amount.

Parties to act on an authenticated copy of this order.

[G.S. KULKARNI, J.]