IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1260 OF 2020

Shetkari Sahakari Sangh Ltd., Kolhapur …**Petitioner**

V/s.

Satish Keshavrao Kamate ….**Respondent**

WITH

WRIT PETITION NO. 4891 OF 2021

Shetkari Sahakari Sangh Ltd., Kolhapur …**Petitioner**

V/s.

Dilip Narayan Shukla ….**Respondent**

WITH

WRIT PETITION NO. 4882 OF 2021

Shetkari Sahakari Sangh Ltd., Kolhapur …**Petitioner**

V/s.

Kolhapur Zilla Sahakari Nokar Union,
Kolhapur ….**Respondent**

WITH

WRIT PETITION NO. 14343 OF 2018

Shetkari Sahakari Sangh Ltd., Kolhapur …**Petitioner**

V/s.

Shri. Ramchandra Tukaram Pawar ….**Respondent**

Mr. Sandeep Koregave a/w. Ms. Pallavi Karanjkar, for the Petitioner.

Mr. Abhijeet Adagule, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 4 December 2023.

P.C. :

1. The question involved in these petitions is about the age of retirement of the Respondents. It appears that the usual date of superannuation of the Respondents as per the Model Standing Orders is 60 years. However, the Respondents have been retired at the age of 55 years. The issue is no more *res-integra.* There have been atleast two previous rounds of litigations on this issue, both having travelled upto this Court and one of which to the Apex Court. In this regard, it would be relevant to refer to the Order dated 31 August 2015 passed by this Court in Writ Petition No. 5081 of 2015 (**Shetkari Sahakari Sangh Ltd. Vs. Kolhapur Zilla Sahakari Nokar Union and Ors.**). This Court has passed the following order :

> 1 This petition is directed against the concurrent findings of the courts below in the order dtd. 7th August, 2012 passed by the Labour Court in Complaint (ULP) No.31 of 2005 and the order dtd. 10 th October, 2014 passed by the Industrial Court in Revision Applications (ULP) No.191 of 2012 and 202 of 2012.
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> 2 Respondent no.1 is the Union, of which respondents no. 3 to 8 are the members. Respondent no,2 is it's Branch Secretary, Kolhapur. Respondent no.1 had filed Complaint (ULP) No.31 of 2005 challenging illegal termination of services of 13 workmen including respondents no.3 to 8 alleging that the petitioner had engaged in unfair labour practices in

reducing the age of retirement of the employees to 55 years, despite the provision of age of retirement as 60 years in the Model Standing Orders applicable to the petitioner. Respondent no.1 sought reinstatement of the employees with full backwages. The Labour Court, by it's order dtd.7 th August, 2012 partly allowed the complaint. It declared that the petitioner had indulged in unfair labour practice in terminating the services of 13 workmen and directed the petitioner to reinstate the employees and continue them until their age of retirement of 60 years and pay 50% of the backwages. Against that order, both the sides had approached
the Industrial Court by way of revision application. The petitioner had sought setting aside of the order, whereas respondent no.1 had sought a direction for full backwages to be paid to the employees. The Industrial Court, by it's order dtd. 10th October, 2014 dismissed revision application of the petitioner and allowed the revision application of respondent no.1. It modified the order of the Labour Court to allow 100% backwages to the employees.

3 As has been pointed out by Mr. Topkar, the learned advocate for the respondents, the record of the proceedings reveal contumacious conduct on the part of the petitioner, which conduct is not disputed by it. Admittedly by the Resolution of it's Board dtd.30 th March, 1999, the petitioner had reduced the age of retirement of it's employees from 60 years to 58 years and retired 31 employees in implementation of the Resolution. Some of the employees had filed complaints being Complaints (ULP) No.87 and 100 of 1999 under Item 1 of Schedule IV of MRTU & PULP Act contending that in view of the provision under the Model Standing Orders governing their service conditions, they were liable to continue the employees till the age of 60 years. By it's judgment and order dtd. 3rd February, 2000, the Labour Court allowed the complaint holding that reduction by the petitioner in the age of retirement from 60 years to 58 years was illegal. The age of retirement of 60 years provided under the Model Standing Orders could not have altered by the petitioner by passing Resolution of it's Board. This order was confirmed by the Industrial Court by dismissing Revision (ULP) No.29 of 2009 by it's order dtd. 19th August, 2006. The petitioner had thereafter approached this court against the order by filing Writ Petition No.8060 of 2006. The writ petition was dismissed by the reasoned order dtd. 21st August, 2007.

4 In total disregard of the order of the Labour Court dtd. 3rd February, 2000 passed in Complaint (ULP) No.87 and 100 of 1999 and it's confirmation by the Industrial Court by it's order dtd. 19 th August, 2006, the petitioner passed the resolution dtd.20 th February, 2005 further reducing the age of retirement to 55 years thereby effecting dismissal of 13 employees. In their written statement to the complaint, at paragraph 21, the petitioner had sought to rely upon the fact of pendency of the writ petition in this court to challenge the two orders by way of justification for the Resolution. But when parties went for trial, Writ Petition No.8060 of 2006 was already dismissed. In that circumstance, it was in fact necessary for the petitioner to accept the order and reinstate the employees in service with full backwages. Instead of taking such corrective action, the petitioner not only challenged the order before the Industrial Court but has carried it further to this court. The petitioner is therefore not entitled to be heard in the matter and it's petition is liable to be dismissed with costs, for unnecessarily dragging the respondents to the court.

5 The petition is dismissed with costs. The petitioner shall pay costs quantified at Rs.10,000/ in one set to respondents no.1 and 2 and Rs.10,000/ to each of respondents no. 3 to 8.

2. Perusal of the order dated 31 August 2015 passed by this Court would indicate that the similar issue was earlier raised by some of the employees in Complaint (ULP) No. 87 and 100 of 1999. By Judgment and Order dated 3 February, 2000 the Labour Court had allowed the complaint holding that reduction of the age of retirement from 60 years to 58 years was illegal. The Order was confirmed by the Industrial Court by dismissing Petitioner’s revision. This Court dismissed the Writ Petition by its Order dated 21 August 2007 and has thereby confirmed the Order of the Labour Court and Industrial Court. Though the law with regard to the reduction of age of superannuation of the employees of the Petitioner was settled, it

appears that the Petitioner again adopted the Resolution on 20 February 2005 further reducing the age of superannuation to 55 years. This action is found to be illegal in the later round of litigation reaching this Court in Writ Petition No. 5081 of 2015.

3. The Order passed by this Court on 31 August 2015 in Writ Petition No. 5081 of 2015 was tested by the Petitioner before the Apex Court. The Apex Court has passed the following order on 25 July 2016 :

> Heard the learned counsel.
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> Looking at the facts of the case, it is directed that instead of 100% of the back-wages, which was directed by the High Court, 80% of the back-wages shall be given by the petitioner to the respondents-workmen. The said amount shall be given in five equal monthly instalments and the first instalment shall be given on or before 31st August, 2016.
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> The special leave petition is disposed of in the above terms.
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> The amount of cost awarded by the High Court to each respondent is reduced from Rs.10,000/- to Rs.5,000/- each.

4. The orders passed by the Labour and Industrial Court in the present petition are on similar lines to the proceedings decided by this Court in Writ Petition No. 5081 of 2015 and by the Apex Court in SLP(C) No.34266 of 2015. I therefore do not see any valid reason as to why this Court would interfere in the Orders passed by the Labour and the Industrial Court holding the action of the Petitioner in reducing the age of retirement to 55 years, to be illegal.

5. Mr. Koregave the learned counsel appearing for the Petitioners would submit that the Respondents are fence sitters who did not approach the Labour Court before or immediately after they retired from service. He would submit that similar relief cannot be granted in their favour as they failed to take timely action in respect of the alleged grievances. He would further submit that some of the Respondents have been re-employed on temporary basis after their retirement and this factor has not been taken into consideration by the Labour and Industrial Court while awarding 100 % backwages. He would rely on 'Nokarnama' executed by Respondents in support of his contention that Respondents voluntarily accepted age of retirement of 55 years.

6. Mr. Adagule, the learned counsel appearing for the Respondent-employee on the other hand would oppose the petition and support the orders passed by the Labour and Industrial Court.

7. In my view, making employees execute 'Nokarnama' would not be a ground to deny similar benefits to Respondents which are granted to other employees in previous rounds of litigations.

8. The Apex Court has already reduced the amount of backwages payable to the employees covered by Writ Petition No. 5081 of 2015 to 80%. In the present case, there appears to be some delay on the part of the Respondents in approaching the Labour Court for filing their respective complaints. To illustrate, in case of Shri.

Satish Kamte, he has been retired from service on 24 March 2012 but appears to have filed Complaint (ULP) No. 123 of 2015 on 21 December 2015. Similar is the case in respect of other Respondents as well. The issue therefore is whether the Petitioner-employer can be saddled with the liability to pay backwages in respect of the period during which the Respondents failed to file any proceedings before the Labour Court. Respondents have already crossed the usual age of retirement. In my view, considering the conduct of the Respondents in not timely approaching the Labour Court, the amount of backwages payable to them needs to be reduced. The Apex Court had directed payment of 80% backwages to employees who had timely approached the Labour Court. For present Respondents, this Court would be justified in further reducing the backwages considering the fact that Respondents are fence sitters and approached the Labour Court only after their cohorts succeeded in litigation. Mr. Adagule would attempt to justify the delay in filing the complaints by submitting that applications for condonation of delay were filed by the Respondents which have been allowed by the Labour Court. In my view, allowing the application for condonation of delay for the purpose of entertaining complaints is altogether different aspect than saddling the liability on the employer for payment of backwages in respect of the delay so caused.

9. If indeed any of the Respondents were re-employed after their retirement on temporary basis and have earned any wages from Petitioners, the amounts so earned by the Respondents will obviously

have to be adjusted/deducted from the amount of backwages payable to them.

10. I therefore proceed to pass the following order :

(i) The impugned Judgment and Orders passed by the Labour and Industrial Court shall stand modified to the extent that while setting aside the orders of retirements of the Respondents, the Petitioner is directed to pay 50% backwages to the Respondents in respect of the period from the date of their retirements till the date of attaining the age of 60 years.

(ii) If any of the Respondents has earned any wages on account of engagement by the Petitioners on temporary basis, the amount of wages so earned, shall be deducted from the amount of 50% backwages awarded under this Order.

(iii) After making adjustments as directed above, the Petitioner shall make the payment of the balance amount of backwages to the Respondents within a period of three months from today.

11. With the above directions, the Writ Petitions are **disposed of**. Any pending Interim Applications also stand disposed. of.

NEETA SHAILESH SAWANT

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Date: 2023.12.05 14:36:19 +0530

SANDEEP V. MARNE, J.