

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2276 OF 2020

Education Officer, Nashik Municipal ...Petitioner
Corporation Education Dept.

Versus

Vilas Pandurang Desai ...Respondent

WITH
WRIT PETITION NO. 2345 OF 2020

Education Officer, Nashik Municipal ...Petitioner
Corporation Education Dept.

Versus

Shankar Gotiram Dhole ...Respondent

WITH
WRIT PETITION NO. 2391 OF 2020

Education Officer, Nashik Municipal ...Petitioner
Corporation Education Dept.

Versus

Khanderao Damodar Jadhav ...Respondent

...

Mr. Rohit Sakhadeo, for Petitioner.

Mr. Bennet D'costa, a/w. Mr. Jignasha Pandya for Respondents.

...

CORAM : SANDEEP V. MARNE, J.
DATE : 26 SEPTEMBER 2023.

ORDER:

These three petitions are filed by the Education Officer of Nashik Municipal Corporation challenging order dated 13 June 2012 passed by the Labour Court Nashik rejecting Municipal Corporation's applications seeking setting aside *ex parte* awards dated 11 September 2008, by which it was directed to reinstate Respondents with continuity in service from 03 January 2007 with full backwages.

2. Briefly stated, facts of the case are that Respondents were engaged by the Nashik Municipal Corporation as Security Guards in its schools. It is contention of Municipal Corporation that engagement was through Contractor and that there was no employer-employee relationship. Respondents claimed that they worked directly under the control and supervision of Headmaster of the concerned school who used to record their attendance and pay salary. After putting in more than two years of continuous service, they were orally terminated on 05 June 2000 on the pretext of termination of contract of M/s Digvijay Security Services. Respondents raised demand for reinstatement, which was not accepted. The appropriate government made References to the Labour Court, Nashik.

3. The Labour Court issued notices in the References which were served upon the Municipal Corporation as per Bailiff's Report. However the Municipal Corporation failed to appear in the References. Respondents filed Statements of Claim, which was also served on Municipal Corporation, but it failed to file its written statement. The References therefore proceeded without any written statement of Municipal Corporation. Respondents filed their Affidavits of evidence. The Municipal Corporation however continued to remain absent in the proceedings and did not cross-examine any of the Respondents. The Labour Court therefore proceeded to pass Award dated 11 September 2008 allowing the References and directed the Municipal Corporation to reinstate Respondents with continuity in service from the date of filing of References i.e. 03 January 2007, with further direction to pay full backwages from 03 January 2007 till their reinstatement.

4. Petitioner-Municipal Corporation filed application dated 12 September 2009 for setting aside *ex parte* Awards dated 11 September 2008. Order dated 30 July 2011 was passed in the said applications directing that the applications would proceed without filing of reply of Respondents. The applications were kept for evidence of Municipal Corporation. However, the Municipal Corporation once again committed default and did not file any evidence. It also remained absent on further dates. On 13 June 2012, the Labour Court proceeded to dismiss applications filed by the Municipal Corporation for setting aside *ex parte*

award. Present Petitions are filed on 27 August 2019 challenging the Orders dated 13 June 2012.

5. Mr. Sakhadeo, the learned counsel appearing for Petitioner-Municipal Corporation would submit that an opportunity of presenting defence deserves to be granted to the Municipal Corporation. That since there is no employer-employee relationship between Municipal Corporation and Respondents and that therefore the relief of reinstatement has erroneously been granted by the Labour Court. That the factum of absence of employer-employee relationship could not be raised before the Labour Court on account of defaults committed by Officers of the Municipal Corporation. That the Respondents were never employed either by the Education Department of the Municipal Corporation or by the Municipal Corporation itself and that therefore there is no question of termination of their services. That on account of frequent transfers of officers in the Education Department, defaults was committed in appearing before the Labour Court leading to passing of *ex parte* Awards. So far as delay in filing the present petitions is concerned, he would invite my attention to pleadings in paragraph Nos.13 and 14 of the petition. He would submit that since implementation of impugned awards would involve huge financial burden for the Municipal Corporation, it needs to be granted opportunity of presenting defence in the interest of justice.

6. *Per contra* Mr. D'costa, the learned counsel appearing for Respondent-Workmen would oppose the petition. He would raise a preliminary objection of the delay in filing the present petitions. He would submit that the Petitioner-Municipal Corporation has exhibited extreme casualness throughout the proceedings. It did not appear before Labour Court during decision of References as well as for decision of their own applications seeking setting aside *ex parte* Awards. Even after rejection of their applications on 13 June 2012, the Municipal Corporation took six long years to file present petitions. He would submit that in respect of similar case, where employees engaged by same Contractor, the Awards passed by Labour Court have been upheld by the Supreme Court. He would pray for dismissal of the petitions.

7. Rival contentions of the parties now fall for my consideration.

8. Petitioner-Municipal Corporation has challenged Labour Court's Orders dated 13 June 2012 by which the applications filed for setting aside *ex parte* Awards have been dismissed in default. Thus, there are twin defaults committed by Municipal Corporation. Firstly, it remained absent in References despite receipt of notice thereof and despite service of Statements of Claim. Its absence led to passing the *ex parte* Awards by the Labour Court on 11 September 2008. Second default was committed by it in its own applications filed for setting aside *ex parte*

Awards. To add a premium to such defaults, Petitioner-Municipal Corporation slept over the matter for six long years and did not challenge orders dated 13 June 2012. This would show extreme casualness on the part of Municipal Corporation in defending itself.

9. Justification given by Petitioner-Municipal Corporation for delay of six years in filing present petitions is to be found in paragraph Nos.13 and 14 of the Petition which reads thus-

13. Thereafter, for some administrative reasons, which do not amount to intentional delay but was actually case of inadvertent delay, the Petitioner could not pursue the Application further. Hence, the L'd Labour Court, Nashik vide its final order dated 13/06/2012 dismissed the Application filed by the Petitioner. It held that, the case was pending for evidence of the Petitioner, however, the Petitioner was continuously absent. No adjournment application was filed. Hence, the Petitioner was found as not interested to proceed with the application. Hereto marked and annexed as Exhibit F is the copy of (typed) final Order dated 13/06/2012 passed by L'd Labour Court, Nashik in Misc Application (IDA) No. 1/2009.

14. Thereafter, the Petitioner initially was not aware about the passing of the Order dated 13/06/2012. However, somewhere in the year 2018-2019, the Petitioner herein became aware of the said order and hence, applied for certified copy on June 2019, the copy was delivered on 19/06/2019. After perusing the said order and taking legal advice, the Petitioner decided to challenge the said order as well as the Order dated 11/09/2008 passed by L'd Labour Court, Nashik in reference IDA No.3/2007 before this Hon'ble Court.

10. I find the above justification to be too casual. After filing of applications for setting aside ex-parte Awards, no attempt was made by the Municipal Corporation to find out the outcome of the said applications. It has been casually stated that the Municipal Corporation became aware of orders dated 13 June 2012 '*somewhere in the year 2018-2019*'. I am therefore not convinced by the justification sought to be given for delay in filing the present petitions. However even if the delay in filing the present Petitions was to be ignored, no case is made out even on merits warranting interference in the order for reinstatement.

11. Petitioner Municipal Corporation has denied employer-employee relationship with the Respondents on the ground that they were engaged through a contractor. However, it appears that another set of Security Guards deployed at the schools of Municipal Corporation through same Contractor-M/s. Digvijay Security Services had raised industrial dispute through Union and by Award dated 27 April 2007, relief of reinstatement was granted alongwith continuity of service and full backwages with effect from the date of Reference. The Single Judge of this Court upheld Award passed by the Labour Court on 27 April 2007 by rejecting Writ Petition No.7987 of 2007 filed by Petitioner-Municipal Corporation by its order dated 10 September 2008. Letter Patent Appeal filed by Municipal Corporation was rejected by Division Bench of this Court on 26 August 2010. The matter was carried further before the Apex Court by the Municipal Corporation, but its SLP came

to be dismissed by the Apex Court on 25 April 2016 clarifying that the entitlement of the workmen and liability for wages would only be from the date of Award and not from the date of Reference.

12. Thus, in respect of similarly placed Security Guards, the relief of reinstatement with full backwages granted by the Labour Court has been upheld up to the Apex Court. The only modification directed by the Apex Court is with regard to entitlement for backwages, which are directed to be paid from the date of Award and not from the date of Reference. Thus, even if repeated defaults on the part of Petitioners are to be condoned and the proceedings are to be remanded as suggested by Mr. Sakhadeo, no fruitful purpose would be served since the similar set of employees have been already granted relief of reinstatement with full backwages from the date of Award.

13. Mr. Sakhadeo did make an attempt to suggest that the employees covered by the litigation up to the Apex Court are not exactly identical but somewhat similar. No material is however placed on record to demonstrate any difference between two sets of employees. Perusal of Order passed by Single Judge of this Court on 10 September 2008 would indicate that similar defence of absence of employer-employee relationship was raised in that case as well. Reliance was placed on Government Resolution issued in the year 1993 as is sought to be done in the present case. This Court however upheld the finding of the Labour

Court that the concerned workmen were employed by the Municipal Corporation directly. The pleadings in the present Petition about those employees is to be found in paragraph No.15 which reads thus -

15. The Petitioner herein had challenged order dated 27/04/2007 passed by L'd Industrial Tribunal Nashik in **similar matter** before this Hon'ble Court. The single Judge of this Hon'ble Court vide its Order dated 10/09/2008 had dismissed the Petition. The Petitioner herein had challenged the said order before the Division Bench of this Hon'ble Court by filing LPA No.190/2010. The said LPA was dismissed by the Division Bench on 26/08/2010. The Petitioner herein had challenged the said order as well as orders passed in **similar matter** before the Hon'ble Supreme Court of India in SLP (c) No.717/2011. The Hon'ble Supreme Court of India vide its order dated 25/04/2016 had disposed off the SLP by modifying the order of the Industrial Court, Nashik to the extent that, said workers will be entitled for reinstatement and liability for wages shall be only with effect from the date of the awards and not from the date of reference. Subject to the above referred modification, the rest of the Industrial Court's order was not modified. The Petitioner herein is bringing the above facts to the notice of this Hon'ble Court to ensure that, the relevant facts are placed before this Hon'ble Court. It is submitted that, in the present case, the Labour Court, Nashik while passing ex-parte award has granted reinstatement and wages from the date of the reference. Hereto marked and annexed as Exhibit G (Colly) are the copy of order dated 10/09/2008 and 26/08/2010 passed by this Hon'ble Court along with copy of the Hon'ble Supreme Court's order dated 25/04/2016 passed in SLP No.717/2011. The Review Petition filed by the Petitioner herein was also disposed off by the Hon'ble Supreme Court vide its order dated 20/09/2017.

(emphasis supplied)

14. Thus, far from demonstrating any difference in the two sets of employees, Petitioners have admitted that the said litigation was a 'similar matter'. I am therefore of the view that no fruitful purpose would be served in remanding proceedings to Labour Court for grant of opportunity of presenting defence by the Petitioner-Municipal Corporation.

15. The only modification that needs to be effected in the Awards dated 11 September 2008 is about dates for payment of backwages. The Labour Court has awarded backwages from the date of Reference i.e. 03 January 2007. The Apex Court, in similar set of employees, had directed that backwages would be from date of Award and not from the date of Reference. Accordingly in the present petitions as well, Respondents would be entitled to backwages with effect from the date of Awards i.e. 11 September 2008 and not from the date of References. Except this modification, I do not find any ground to interfere in the impugned awards.

16. Writ Petitions are accordingly disposed of by modifying the Awards dated 11 September 2008 to the extent of entitlement of Respondents to backwages with effect from 11 September 2008. There shall be no order as to costs.

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SANDEEP V. MARNE, J.