

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14298 OF 2022

M/s. Bhatia Hospital

...Petitioner

Versus

Nandkumar Hindurao Mane

...Respondent

...

Mr. Kiran S. Bapat, Senior Advocate a/w Mr. Desai i/by M/s. Desai and Desai Associates, for Petitioner.

Mr. Lahu S. Gaikwad, for Respondent.

...

CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 12, 2023.

P.C.:

1. By this Petition, Petitioner challenges Judgment and order dated 30 September 2019 passed by Industrial Court, Mumbai allowing Complaint (ULP) No.279 of 2015 filed by the Respondent for his pay fixation after revocation of suspension and for grant of benefit of settlement dated 11 July 2002, 1 November 2007, 21 February 2011 and 29 July 2014.

2. I have heard Mr. Bapat, the learned Senior Advocate appearing for Petitioner. He would submit that the complaint filed by Respondent was hopelessly barred by limitation. That by filing a complaint in the year 2015.

Respondent claimed benefits of settlements executed in the years 2002, 2007 & 2011 which demand was clearly barred by limitation. Mr. Bapat would further draw my attention to the Terms of Settlement which imposed an obligation on the part of an employee to sign an undertaking in a prescribed format. That admittedly Petitioner did not submit such undertaking and therefore he was not entitled to any benefits under the Terms of Settlement. Mr. Bapat would further submit that even under suspension, it was for the respondent to approach Petitioner-hospital for revision of his subsistence allowance in accordance with the Terms of Settlement. He would submit that the Industrial Court has not at all considered this aspect and has erroneously allowed Respondent's complaint.

3. I have also heard the learned counsel appearing for Respondent, who would oppose the Petition and support the order passed by Industrial Court.

4. It appears that the Respondent, while in employment of Petitioner-hospital was placed under suspension in the year 2003 and was subjected to disciplinary proceedings by issuance of charge sheet dated 18 January 2004. The proceedings remained pending for over 11 years and the Respondents came to be punished with the penalty of suspension for a period

of three days. It appears that the Respondent was paid subsistence allowances during the period of his suspensions.

5. In the meantime several settlements were entered into by the recognized unions with the Petitioner management on 11 July 2002, 1 November 2007, 21 February 2011 and 29 July 2014. In this background the issue before the Industrial Court was whether Respondent was entitled to claim the wages agreed in the settlements which he could not receive on account of his suspension.

6. It appears that the Respondent was embroiled in disciplinary proceedings in respect of an incident which occurred on 8 October 2003. He was placed under suspension. The charge levelled against him was apparently not very serious, which is clear from the fact that the ultimate penalty imposed on him is suspension for a period of three days. For such minor charge, Respondent was continued under suspension for a period of over 12 years between 2003 to 2015. Continuance of suspension for such unduly long period was clearly unwarranted. Ultimately he was reinstated in service. In the meantime several settlements were signed by the recognized unions with the Petitioner-hospital. In my view, it was the duty of Petitioner hospital to pay a subsistence allowance on the basis of revised wages in terms of various

settlements entered into with the recognized unions. Non submission of the undertaking as per the settlement could not have been a valid ground for not extending the benefit of pay revision to Respondent. In fact, the Petitioner-Management is responsible for undue delay in respondent's suspension. If Respondent is now to be denied the benefits of higher wages, it would act as double whammy, where he remained under suspension unduly for long period of 12 long years and at the same time would be denied wages on par with his cohorts. The order of the Industrial Court has only enabled Respondent to draw wages which are agreed by the Petitioner-Hospital for all its employees. In fact, the conduct of Petitioner-Hospital in keeping Respondent under suspension for 12 long years and later using the ruse of suspension for denying him wages on par with other workers does not commend this Court. Respondent was erroneously discriminated by paying him lesser wages on the pretext of suspension. The Industrial Court has rightly stepped in to ensure payment of wages to Respondent in terms of various settlements. Since suspension was revoked in 2015, cause for filling complaint arose immediately thereafter and therefore the complaint could not be treated as time-barred. In my view therefore there is no perversity in the findings recorded by the Industrial Tribunal in allowing Respondent's Complaint.

7. Petition, being devoid of merits, is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)