

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.118 OF 2012
IN
WRIT PETITION NO.3392 OF 2010**

Mahanagar Telephone Nigam Ltd.
having its office at
Telephone House, Prabhadevi,
Mumbai – 400 028 .. Appellant

vs.

Baban Kondiba Nikalje
C/o. All India Telecom
Employees Union,
New Municipal Labour Camp,
Ward No.2, Block No.5,
Room No.1, Sewree,
Mumbai 400 015 .. Respondent

**WITH
LETTERS PATENT APPEAL NO.119 OF 2012
IN
WRIT PETITION NO.3387 OF 2010**

Mahanagar Telephone Nigam Ltd.
having its office at
Telephone House, Prabhadevi,
Mumbai – 400 028 .. Appellant

vs.

Uttam Sadhu Sonawane
C/o. All India Telecom
Employees Union,
New Municipal Labour Camp,
Ward No.2, Block No.5,
Room No.1, Sewree,
Mumbai 400 015 .. Respondent

WITH

**LETTERS PATENT APPEAL NO.120 OF 2012
IN
WRIT PETITION NO.3388 OF 2010**

Mahanagar Telephone Nigam Ltd.
having its office at
Telephone House, Prabhadevi,
Mumbai – 400 028 .. Appellant

vs.

Dilip Sitaram Borade
C/o. All India Telecom
Employees Union,
New Municipal Labour Camp,
Ward No.2, Block No.5,
Room No.1, Sewree,
Mumbai 400 015 .. Respondent

**WITH
LETTERS PATENT APPEAL NO.121 OF 2012
IN
WRIT PETITION NO.3394 OF 2010**

Mahanagar Telephone Nigam Ltd.
having its office at
Telephone House, Prabhadevi,
Mumbai – 400 028 .. Appellant

vs.

Kundalik Anna Ahire
C/o. All India Telecom
Employees Union,
New Municipal Labour Camp,
Ward No.2, Block No.5,
Room No.1, Sewree,
Mumbai 400 015 .. Respondent

Mr. G. T. Ramchandani for the Appellants.
Mrs. Seema Chopda for the Respondents.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 15th FEBRUARY 2024
PRONOUNCED ON : 22nd APRIL 2024.**

JUDGMENT [PER: SHYAM C. CHANDAK, J.]

1) Present Letters Patent Appeals challenged the common Order dated 13th March 2012, passed by learned Single Judge of this Court in Writ Petition Nos.3394 of 2010, 3387 of 2010, 3388 of 2010 and 3392 of 2010, whereby said Writ Petitions were dismissed. The parties herein and the parties in the said Writ Petitions are the same *i.e.* the Appellant and the Respondents.

2) Heard Mr. Ramchandani, learned Advocate for the Appellants and Mrs. Chopda, learned Advocate for the Respondents. Perused the record.

3) The facts giving rise to these Appeals are as under:-

That, the Bombay Telephones had engaged the services of the Respondent as a daily rated *Mazdoor* on 1st October 1984. It is stated that, after coming into operation of the Appellant as a Government company, the Respondents did not turn up to attend their job with the Appellant, not even as daily rated *Mazdoor* or casual labourer or even as a regular employee and thus, they abandoned the services of the Appellant.

3.1) However, the Respondents with 20 other casual labourers filed a complaint/statement before the Assistant Labour Commissioner in

February 1994, alleging their removal from the service *w.e.f.* March 1987. Since the conciliation in the matter failed, the Central Government referred the dispute for adjudication to the Central Government Industrial Tribunal (C.G.I.T.). The C.G.I.T. by its Order 6th October, 1999 decided the said Reference bearing No.2/5 of 1998 and directed reinstatement of the Respondents with continuity of services with back wages from the date of demand raised by them before the Assistant Labour Commissioner. The said award has been challenged in this Court in Writ Petition No.3511 of 2000, in which the Respondents herein are Respondent Nos.4, 6, 7 and 8 respectively. The said Petition was admitted.

3.2) Thereafter, the Respondents filed separate Applications under Section 33-C(2) of the Industrial Disputes Act, 1947 ('the Act', for short) before the C.G.I.T. seeking for computation and determination of the amount due to them, contending that they were entitled to minimum wages of lowest paid workmen of MTNL from 1-4-1988 to 1-1-1996, 1-1-1996 to 30-10-1998 and from 1-11-1998 i.e. basic pay of Rs.725/- per month + D.A. of Rs.2550/- per month.

3.3) Meanwhile, the Appellant filed a Letters Patent Appeal No.76 of 2003, against the Order dated 2nd August 2002 thereby refusing to grant an interim relief in Writ Petition No.3511 of 2000. By an Order dated 4th September 2006, said Letters Patent Appeal No.76 of 2003 was not

admitted and it is disposed off with an observation that, if advised, the parties may approach the Court concerned for early hearing of Writ Petition No.3511 of 2000 and giving liberty to the Appellant to apply for interim relief in the said Petition. Meanwhile, the separate Applications filed by the Respondents under Section 33-C(2) of the Act were allowed by the C.G.I.T. by its separate Judgment and Order dated 4th November 2009 and the Appellant was directed to pay the Respondents at minimum wages grade from 29th December 1993 onwards with Dearness Allowances and other ancillary benefits available to that post with interest at the rate of 12% *per annum* on the due amount and costs of Rs.5,000/-. The Appellant challenged the said Judgments and Orders dated 4th November 2009, by filing separate Writ Petitions bearing Nos.3392 of 2010, 3387 of 2010, 3388 of 2010 and 3394 of 2010.

3.4) After hearing the parties, the learned Single Judge of this Court dismissed the said Writ Petitions by the impugned common Order dated 13th March 2012, for the reasons that, it is an admitted position that, Writ Petition No.3511 of 2000 has been filed against the said Order dated 6th October, 1999. Though the Petition was admitted, the interim relief which was granted earlier has been vacated thereafter and there is no interim relief operating in favour of the Petitioners. In such a factual situation no fault can be found with the order of the C.G.I.T./Labour Court No.II,

Mumbai, directing the Petitioners to pay salary equivalent to the minimum wages. Hence, there is no merit in all these Petitions and the same are dismissed.

4) Mr. Ramchandani, learned Advocate for the Appellants submitted that, the burden was upon the Respondents to prove their entitlement to the salary Rs.725/- + D.A. Rs.2,550/- per month. The said aspect was not adjudicated in the said Reference/earlier proceedings. The issue as to whether the Respondents were workman as decided in the Award dated 6-10-1999 in Ref.2/5 of 1998, has been pending decision in Writ Petition No.3511 of 2000. As such, the impugned Order is in excess of jurisdiction and it is liable to be set aside.

5) In reply, learned Advocate for the Respondents submitted that, the impugned Order is well reasoned and it is in accordance with law, therefore, it does not call for an interference.

6) The submissions made by learned Advocate for the Appellants are mainly based on the decision in the case of *Municipal Corporation of Delhi vs. Ganesh Razak & Anr.*, 1995 LAB. I.C. 330, wherein it is held that, “.....the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award

or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. In para 12 it is held that, “.....where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C (2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C (2) like that of the Executing Court's power to interpret the decree for the purpose of its execution”.

7) In the case in hand, initially, the C.G.I.T. allowed the Reference Nos.2/5 of 1998 by an Award passed on 6th October, 1999 on merits. Thereafter, said Award was challenged in Writ Petition No.3511 of 2000. Meanwhile, the Respondents filed separate Application under Section 33-

C(2) of the Act. Therefore, the Presiding Officer of C.G.I.T. directed the Appellants to pay the Respondents the minimum wages from the relevant dates coupled with other ancillary benefits available to that post with interest at the rate of 12% per annum and costs of Rs.5,000/-. In this background, the learned Single Judge noted that, the facts of the case in hand and the facts of the reported case relied upon by the learned Advocate for the Appellant are distinct. Therefore, the Writ Petitions challenging the Judgments and Orders dated 4th November 2009 came to be dismissed by the impugned Common Order.

8) On careful consideration of the submissions, we are of the view that, the learned Single Judge has rightly dismissed the Writ Petitions by the impugned Order. As a result, the present Letters Patent Appeals are liable to be dismissed and are accordingly dismissed.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)