

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.15823 OF 2023**

President Koregaon Nagar Panchayat And Anr.Petitioner

Versus

Santosh Baban BhasmeRespondent

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Mr. Ajit J. Kenjale, a/w. Mr. Sai R. Kadam & Mr. Azhruddin Khan for the
Petitioner.

Mr. Sagar A. Mane for the Respondent.

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CORAM : SANDEEP V. MARNE, J.

DATED : 09 JANUARY 2024.

P.C. :

The challenge in the present petition is to the Order dated 07 November 2022 passed by the Member, Industrial Court, Satara by which Respondent's Application at Exh.U-2 for interim relief was allowed.

2. Industrial Court has directed Petitioner to temporarily desist from engaging in unfair labour practice under items 9 & 10 of Schedule-IV of the MRTU and PULP Act, 1971 and not to take any unlawful action against Respondent without following due process prescribed by law. The further direction of the Industrial Court is to deposit salary of the Respondent for the months of June 2021 and July 2021 in the Court with liberty to Respondent to withdraw the same.

3. I have heard Mr. Kenjale, the learned counsel appearing for Petitioner-Nagar Panchayat. He would submit that Respondent has engaged in serious misconduct of corruption during Covid-19 pandemic and that the Petitioner -Nagar Panchayat is within its rights to take appropriate action against him for commission of gross misconduct. He would further submit that Order of the Industrial Court prevents the Petitioner from taking any disciplinary action against Respondent. Mr. Kenjale would submit that the Chief Officer of the Nagar Panchayat has found Respondent guilty of dereliction of duty alleged in the show cause notices dated 17 February 2021 and 01 April 2021. That the Order sending Respondent on compulsory leave is well reasoned Order after affording due opportunity of defence to the Respondent. Without prejudice, he would submit that the Petitioner-Nagar Panchayat willing to deposit amount of salary for the months of June and July 2021 in the Industrial Court during pendency of the present petition and during pendency of the Respondent's complaint. He would however oppose the liberty to Respondent to withdraw the said amount.

4. *Per contra*, Mr. Mane, the learned counsel appearing for Respondent would oppose the petition and support the Order passed by the Industrial Court. He would submit that the Order is flouted by not depositing the amount of salary for the months of June and July 2021 for considerable period of time. He would submit that there is no provision in the Rules for sending an employee on compulsory leave. He would pray for dismissal of the petition.

5. After having considered submissions canvassed by the learned counsel appearing for parties, it is seen that Petitioner-Nagar Panchayat has

levelled certain allegations against Respondent by issuing Show Cause Notices dated 17 February 2021 and 01 April 2021. Additionally it appears that resolution is adopted by the General Body of Nagar-Panchayat on 17 February 2021 making grave allegation of demand of amounts by the Respondent from citizens while executing works of construction department and receipt of various complaints from the citizens. For that conduct, Show Cause Notice dated 17 February 2021 was issued proposing to place Respondent under suspension by referring to the provisions of Rule-3 of Maharashtra Civil Services (Conduct) Rules 1979 and Rules 4(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Petitioner responded to the said Show Cause Notice dated 17 February 2021 by submitting his reply. It appears that Respondent was placed under suspension by the Petitioner-Nagar Panchayat in pursuance of the said Show Cause Notice dated 17 February 2021.

6. Further it appears that on 01 April 2021 a separate Show Cause Notice was served on the Respondent alleging misconduct about failure to take action with regard to appointment of construction engineer for execution of works under Pradhan Mantri Awas Yojna. By the said Show Cause Notice, Petitioner-Nagar Panchayat proposed to send respondent on compulsory leave for a period of 02 months without any wages. Respondent replied said Show Cause Notice on 06 April 2021. After considering his reply, Order is passed which is shown to have been dated 01 April 2021 (there appears to be a typographical error as the Order refers to Respondent's reply dated 06 April 2021). By that Order, Respondent has been sent on compulsory leave for a period of 02 months without any pay. This has necessiated filing of Complaint (ULP) No.40 of 2021 by Respondent

challenging the suspension period from 01 April 2021 to 04 March 2021 as well as Order dated 01 April 2021. In that complaint, he filed Application at Exh.U-2 to temporarily restrain the Petitioner-Nagar Panchayat from taking any unlawful action without following due process of law and for payment of salary for the months of June and July 2021. The Industrial Court has proceeded to allow the Application at Exh.U-2 and has issued directions restraining Petitioner-Nagar Panchayat from taking any unlawful action against Respondent without following due process of law and further directed it to deposit salary for the months of June and July 2021 with liberty to the Respondent to withdraw the same.

7. So far as misconduct allegedly committed by Respondent is concerned, Petitioner-Nagar Panchayat is always free to initiate disciplinary proceedings against Respondent under the provisions of M.C.S. (Discipline and Appeal) Rules 1979. The Order passed by the Industrial Court on 07 November 2021 will not and cannot come in the way of Petitioner-Nagar Panchayat from initiating such disciplinary action and taking the same to its logical end. This would take care of apprehension expressed by Mr. Kenjale about Petitioner-Nagar Panchayat's inability to take disciplinary action and to punish Respondent.

8. So far as second aspect of sending Respondent on compulsory leave is concerned, *prima facie* it appears that there is no provision in the M.C.S. (Discipline and Appeal) Rules under which an employee can be sent on compulsory leave without wages. If any employee is to be prevented from performing duties, he can be placed under suspension by paying subsistence allowance as per Rules. However an employee cannot be sent on compulsory

leave without wages. In that view of the matter, no serious error can be traced in the directions issued by the Industrial Court for deposit of salary for the months of June and July 2021 with liberty to Respondent to withdraw the same.

9. Writ Petition is accordingly disposed of by clarifying that Order passed by the Industrial Court on 07 February 2022 shall not prevent Petitioner-Nagar Panchayat from initiating disciplinary proceedings against Respondent for any misconduct alleged and from taking such disciplinary proceedings to their logical end by imposing appropriate penalty, if the misconduct is proved. So far as the direction for deposit of salary for the months of June and July 2021 with liberty to Respondent to withdraw the same is concerned, no error is noticed in the said direction. As per the willingness shown by Mr. Kenjale, amount of salary for the months of June and July 2021 shall be deposited by the Petitioner-Nagar Panchayat in the Industrial Court on or before 31 January 2024. Respondent would be at liberty to withdraw the same. Since amount of salary is being deposited, the proceedings initiated by Respondent for non-compliance of Order of the Industrial Court would be rendered infructuous and a formal Order for its disposal be passed.

10. With the above directions Writ Petition is disposed of.

SANDEEP V. MARNE, J.

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