

AGK

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

WRIT PETITION NO.9079 OF 2016

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2024.01.02
16:24:36 +0530

Kiran Manohar Yeralkar & Anr.

... Petitioners

V/s.

Sterling Roadlines Pvt. Ltd. & Ors.

... Respondents

Mr. Mahesh Devlekar for the petitioner.

Mr. Sahil Saiyed for respondent Nos.2a & 4.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 2, 2024

PC.:

1. By the impugned order, the Third Labour Court has rejected application under Section 33-C(2) of the Industrial Disputes Act, 1947 seeking wages, yearly increment at Rs.50/- per year, bonus and leave encashment from 14 May 1994.

2. According to the applicants, they are employees of opponent NO.1 as accounts assistant and accounts clerk. Opponents Nos.2 and 3 are Managing Director and Joint Managing Director where as opponent No.4 is Executive Officer of opponent No.1. As the opponents failed to pay wages and increment, the applicants filed Complaint (ULP) No.1005 of 1989 claiming annual increments from 1987 to 1990. The Industrial Court directed opponents to pay annual increments with earned wages with interest at the rate of 12% per annum.

3. As the opponents failed to pay as per the directions of the Industrial Court, the applicants filed Application (ULP) No.28 of 1991 which was allowed and recovery certificate was issued for Rs.46,605.75/-. The said order attained finality.
4. The applicants thereafter filed Application (IDA) No.550 of 1995 for recovery of arrears of increments from April 1990 to July 1993 and other benefits. By order dated 20 September 2004, the opponents were directed to pay applicants amount of Rs.1,26,572/- and Rs.1,16,460/-. Accordingly, recovery certificate was issued on 31 January 2005.
5. The applicants thereafter filed present application seeking yearly increment, bonus and leave encashment from 14 May 1994 onward.
6. The legal representatives of respondent No.2 have contested the application contending that the legal representatives are not liable for payment of company's dues. The Labour Court by the impugned order dismissed the application.
7. On perusal of the record and the impugned judgment, it appears that no fault can be found in rejection of application against opponent Nos.2 and 3 are concerned. Having considered Section 18 quoted by the Labour Court in paragraph 14, in my opinion, the legal representatives of opponent No.2 cannot be made liable for company's dues.
8. However, on perusal of paragraphs 22 and 23, it appears that the Labour Court has dismissed the application against opponent No.1/company mainly on the ground that there is no evidence

about wages produced by the applicants. If there is no material produced by the applicants, the Labour Court could have arrived at an appropriate conclusion based on the facts and figures mentioned in Complaint (ULP) No.826 of 1994 and Application (IDA) No.550 of 1995. It is, therefore, necessary that the order in relation to respondent No.1 needs to be set aside and the Labour Court need to be directed to decide the application afresh to adjudicate liability of opponent No.1. Hence, following order:

- a) The impugned order to the extent it dismissed Application against respondent No.1 is quashed and set aside;
 - b) Application (IDA) No.198 of 2005 is restored to the file of the Tenth Labour Court, Mumbai;
 - c) The Tenth Labour Court, Mumbai shall adjudicate the liability of opponent No.1 in accordance with law;
 - d) Rest of the order dated 28 April 2016 passed by the Tenth Labour Court, Mumbai is confirmed as against legal heirs of opponent Nos.2 and 3;
- 9.** The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)