



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1568 OF 2019

Ashok S/o Rasiklal Pandya .Vs. Yash Pharma Laboratories Pvt.Ltd. Through its
Director Mr. Atri Yashodhan Shah and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Sohoni, Advocate for petitioner.

Shri A.P. Wachasundar, Advocate for respondents.

CORAM : ANIL S. KILOR, J.

DATED : 09/01/2024

1. Heard.

2. The judgment and order dated 24.08.2017 passed by the Presiding Officer, Labour Court, Akola rejecting the application filed by the petitioner for recovery of dues under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"), is under challenge in this writ petition.

3. The brief facts of the present case are as under:

The petitioner was appointed in the respondent-company as Professional Service Representative and subsequently, he was confirmed as a Supervisor. Since, he could not attend the duties from 23.06.2000, the petitioner applied for sick leave which was sanctioned. However, the respondents decided to give assignment of the

petitioner to some other Area Manager and to place him at suitable head quarter on resuming duties.

4. Being aggrieved by this, the petitioner filed a Complaint ULP No.157 of 2000 before the Industrial Court, Akola, which alleged to have prompted the respondent-company to transfer the petitioner from Akola to Jammu vide letter dated 24.10.2000.

5. Since there was no establishment at Jammu, the petitioner filed a complaint ULP No.71 of 2001 under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as “MRTU and PULP Act”) read with item 3 and 5 of Schedule IV before the Industrial Court, challenging the transfer order.

6. The petitioner succeeded in the said complaint. The Industrial Court set aside the transfer order vide judgment and order dated 14.08.2008. The said judgment and order was not challenged by the respondents and it has attained finality.

7. It is pertinent to note that, the Misc. (ULP) (Delay Condonation) Application No.2 of 2014 filed by the respondents for condonation of delay in filing the revision

application came to be dismissed vide judgment and order dated 23.04.2018 and as such, the judgment and order passed by the Industrial Court dated 14.08.2008 has attained finality.

8. It is imperative to note that, in a judgment dated 14.08.2008, the Industrial Court has categorically held that there was no establishment at Jammu and despite the said fact, the respondents transferred the petitioner to Jammu which amounts to termination of the service of the petitioner.

9. Since the order of the Industrial Court was not implemented by the respondents and as the petitioner was not receiving the salary from the year 2000, the petitioner filed an application under Section 33-C(2) of the ID Act which came to be dismissed on the ground that, the petitioner failed to give calculations and further the petitioner has not worked since 11.07.2000 till 14.08.2008. The said judgment and order is the subject matter of challenge in this writ petition.

10. Shri Sohoni, learned counsel for the petitioner submits that, though the Industrial Court has held and observed that there is no establishment at Jammu and despite the said fact, transferring the petitioner to such place

amounts to termination of the petitioner, the learned labour Court while deciding the application under Section 33-C(2) of the ID Act observed that, it is not the case of the petitioner that, he was restrained from resuming on duty. It is submitted that this finding is contrary to the finding recorded by the Industrial Court which has attained finality and therefore, he submits that, denial of rightful claim of the petitioner is illegal.

11. It is further submitted that, the learned Labour Court has given much emphasis on the cross-examination of the petitioner wherein, he has admitted that detail calculations are not given and there was no stay during the pendency of the complaint before the Industrial Court.

12. The learned counsel for the respondents submits that, the joining report was not filed by the petitioner on record to show that he joined the duties. He further submits that, as the petitioner is a Medical Representative there is no requirement to have any establishment at a transferred place. He, therefore, submits that, the learned labour Court has rightly held that the petitioner failed to point out that, he was restrained from joining the duties. It is further submitted that, as the petitioner did not work the principle of 'no-work, no-pay' would apply to the petitioner.

13. He further submits that, as the detail calculations were not given, the learned labour Court has rightly held against the petitioner.

14. In light of the rival submission of the parties, I have perused the record and the impugned order.

15. The learned Industrial Court while allowing the complaint filed by the petitioner vide judgment dated 14.08.2008 set aside the transfer order of the petitioner dated 24.10.2000 transferring him to Jammu from Akola. While doing so the industrial Court has categorically observed that, there is no department or establishment or any branch of the company at Jammu but merely to trouble the petitioner he was transferred to sensitive area. It is further observed that, it amounts to termination of service. It is further observed that, to prove contrary, the respondent has not cross-examined any witnesses and as such, the learned Industrial Court has observed that, out of harassment, the petitioner was transferred at a place where he cannot joined.

16. The said findings have attained finality in absence of any challenged to the same. In the circumstances, the argument made by the learned counsel for the respondents that, for Medical Representative, it is not

necessary to have establishment or office at the transferred place, is rejected.

17. Moving further the Industrial Court while denying the claim of the petitioner has relied upon the cross-examination and held that, no details and particulars are given about the amount claimed.

18. In the backdrop of said observations, I have perused the cross-examination wherein the petitioner has admitted that, he is not given the details about the calculations arrived at and given in the chart. However, there is not a single suggestion by the respondents disputing the figure arrived at by the petitioner or denying the claim of the petitioner. In absence of such challenge, there is no occasion for the petitioner to give further details of the claim.

19. Moreover, the finding recorded by the learned labour Court that, it is not the case of the respondents that, he was restrained from resuming on duty, is contrary to the finding recorded by the Industrial Court and referred herein above.

20. In the circumstances, I am of the opinion that, the learned Labour Court has committed error in not considering the case of the petitioner in right prospective

and had given much weightage to the cross-examination ignoring the fact that, there is no suggestion as given to the petitioner in cross-examination as pointed out herein above.

21. In the circumstances, I am of the opinion that, the present matter needs to be remanded back to the learned labour Court for fresh consideration. Accordingly, I pass the following order:

- i) The writ petition is **partly allowed**.
- ii) The judgment and order dated 24.08.2017 passed by the Presiding Officer, Labour Court, Akola in Application (IDA) No.06 of 2013, is hereby quashed and set aside.
- iii) The matter is remanded back to the learned labour Court to decide the same afresh after hearing both the parties.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

Later on:

21. The learned counsel for the respondents at this stage makes a request to grant liberty to raise grievance against the judgment and order dated 23.04.2018 passed by the Industrial Court, Akola.

22. Such request cannot be accepted since this matter pertains to the proceeding under Section 33-C(2) of the ID Act and it has nothing to do with the judgment and order dated 23.04.2018.

JUDGE