

Ajay

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

WRIT PETITION NO. 83 OF 2024

Gautam Kisan Kedari

.. Petitioner

Versus

Appropriate Rural Technology Institute (ARTI) &
Anr

.. Respondents

-
- Mr. Sushan Mhatre, appointed Advocate for Petitioner.
 - Mr. Dnyaneshwar Adsul for Respondent No.1 – Institute.
 - Ms. T.J. Kapre, AGP for Respondent No.2 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : JULY 09, 2025.

P.C.:

1. Present Writ Petition takes exception to judgement dated 26.07.2023 passed by the Labour Court in Application (I.D.A.) No.47 of 2021 rejecting Application filed by Petitioner under Section 33C(2) of the Industrial Disputes Act, 1947 (for short “**the said Act**”) seeking recovery of unpaid salary for the period from January 2017 to May 2019.

2. Brief facts germane for adjudication of the present Writ Petition are as follows:-

2.1. Petitioner was appointed as Entrepreneurship Development and Technical Back-up (EDTB) Co-ordinator in Respondent No.1 – Institute in the year 2000 however he was given appointment letter only on 02.04.2008. On 06.04.2009, Petitioner’s appointment as EDTB

Co-ordinator was confirmed by Respondent No.1 – Institute. Thereafter on 26.07.2016 Petitioner was promoted to the position of Field Assistant and subsequently he superannuated from services on 31.03.2019.

2.2. On 04.08.2020, Petitioner addressed a demand notice to Respondent No.1 – Institute seeking payment of outstanding unpaid wages totaling to Rs.7,11,886/- and statutory dues i.e. provident fund contributions for the period from January 2017 to May 2019. On 10.09.2020, Respondent No.1 – Institute issued reply to Petitioner accepting their liability for the amount of Rs.7,11,886/- towards him.

2.3. As Respondent No.1 – Institute failed to pay the outstanding dues of Petitioner, he filed Application dated 24.11.2020 before the Labour Commissioner. Representative of Respondent No.1 - Institute appeared before the Commissioner and admitted their liability and made a statement that Petitioner's dues would be paid by them as and when the funds would be available with them. As no settlement could be worked out between the parties, the Labour Commissioner closed the matter and furnished his Failure Report dated 01.03.2021 to Petitioner.

2.4. Thereafter on 03.12.2021, Petitioner filed Application under Section 33C(2) of the said Act bearing No.47 of 2021 before the Labour Court. Though duly served, Respondent No.1 – Institute failed

to appear before the Labour Court. Hence on 12.08.2022 the Labour Court passed order dated 12.08.2022 for proceeding in the matter ex-parte. Thereafter Petitioner led his evidence and filed supporting documents before the Labour Court.

2.5. On 26.07.2023 after considering the submissions and material placed on record by Petitioner, the Labour Court passed ex-parte judgement dated 26.07.2023 rejecting the Application filed by Petitioner.

2.6. Hence the present Petition.

3. Mr. Mhatre, learned Advocate has been appointed through the Legal Aid Department to represent and espouse the cause of Petitioner. He would submit that the Labour Court has wrongly observed that Petitioner was receiving a salary beyond the prescribed limit under the said Act as the said Act does not provide for any limit on the wages / salary earned by a 'workman'. He would submit that the only limit which the Act provides is for a person employed in a supervisory capacity i.e. managerial nature and drawing wages exceeding Rs.10,000/- per month. He would submit that the documents placed on record by the Petitioner before the learned Labour Court clearly demonstrate that he was working in the Respondent No.1 – Institute as a 'workman'. He would submit that as Respondent No.1 – Institute did not appear before the Labour Court to

lead any evidence to disprove Petitioner's case or to show that Petitioner was working in a managerial or supervisory capacity, the Labour Court has wrongly recorded its finding that Petitioner was not a 'workman' as per its definition provided under Section 2(s) the said Act without the same having been passed in any manner by the employer.

3.1. He would submit that it is settled law that even if a work of a clerical nature has been distributed between three persons then it would not cease to be clerical merely because one of the three is asked to supervise the work of all three. He would submit that the Supreme Court has laid down the test which must be used to determine the question as to what is primary, basic or dominant nature of duties, however the Labour Court without applying any such test proceeded to decide the eligibility of Petitioner as 'workman' solely on the basis of quantum of salary which is impermissible in law.

3.2. He would submit that the Labour Court has erred in recording a finding that Petitioner did not have any pre-existing right and therefore his claim was unsubstantiated. He would submit that the Labour Court did not consider the documents placed on record by Petitioner which demonstrate his pre-existing right. He would submit that the Petitioner has placed on record the original demand notice dated 04.08.2020 addressed by him to Respondent No.1 – Institute which was duly acknowledged and accepted by Respondent No.1 –

Institute in their reply letter dated 10.09.2020, the original of which was also placed on record by Petitioner.

3.3. He has drawn my attention to page No.65 of the Petition which is a list prepared by Respondent No.1 – Institute enlisting the names of the staff alongwith their outstanding dues as on 31.03.2022 and would submit that Petitioner's name is found at serial No.2 therein which amounts to clear admission of its liability towards Petitioner by the Respondent No.1 – Institute.

3.4. In view of his above submissions, he would urge the Court to quash and set aside the impugned judgement dated 26.07.2023 passed by the Labour Court and thereby allow the Application under Section 33C(2) of the said Act filed by Petitioner.

4. *PER CONTRA*, Mr. Adsul, learned Advocate appearing for Respondent No.1 – Institute would submit that according to his instructions Respondent No.1 – Institute does not have funds. He is instructed by one Mr. H.Y. Mahajan, authorised representative of Respondent No.1 – Institute who has interacted through him with Court and has informed the Court that even his own substantial dues are unpaid by Respondent No.1 – Institute. Be that as it may such things cannot preclude the Respondent No.1 – Institute from paying the outstanding due of wages of the Petitioner which they have infact admitted. Hence, once the liability is accepted the Respondent No.1 –

Institute has to pay the same, the order of the Labour Court cannot be sustained. The request made by Mr. Adsul on behalf of Respondent No.1 – Institute that as and when the funds will be available with Respondent No.1 – Institute the dues of Petitioner shall be paid cannot be accepted by the Court. Hence, the submissions made by Mr. Adsul are rejected.

5. Ms. Kapre, learned AGP for Respondent No.2 – State would support the judgement dated 26.07.2023 passed by the Labour Court and would submit that perusal of the judgement would reveal that the Labour Court has carefully considered all submissions advanced on behalf of the Petitioner and also examined all the documents submitted by him and hence it cannot be faulted with. She would submit that the Labour Court has correctly recorded that Petitioner though retired in May 2019, made demand for his salary only on 04.08.2020 i.e. after a delay of 15 months without giving proper justification. She would therefore urge the Court to confirm the judgement dated 26.07.2023 passed by the Labour Court and dismiss the Writ Petition.

6. I have heard Mr. Mhatre, learned appointed Advocate for Petitioner, Mr. Adsul, learned Advocate for Respondent No.1 – Institute and Ms. Kapre, learned AGP for Respondent No.2 – State and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due

consideration of the Court.

7. In the present case it is seen that Petitioner filed Application under Section 33C(2) of the said Act for recovery of unpaid salary for the period from January 2017 to May 2019. It is trite law that the Court adjudicating such Application is deemed to be an Execution Court and hence the only question which the Court had to adjudicate was “*Whether there was any pre-existing right to the Petitioner against Respondent No.1 – Institute?*”

8. A perusal of Section 33C(2) of the said Act makes it evident it is in the nature of execution proceedings and the same envisages a prior adjudication or recognition by an employer of the claim of the workman to be paid wages at the rate which is claimed by him. Hence it is clear that the Court adjudicating such Application is not required to go beyond its scope except for determination of the ‘pre-existing right’. In the present case it is seen that such ‘pre-existing right’ did accrue to the Petitioner on account of he not having been paid his dues from January 2017 to May 2019 which was duly acknowledged by the employer – company in writing.

9. It is seen that the representative of Respondent No.1 – Institute appeared before the Labour Commissioner and admitted their liability of Rs.7,11,886/- and also made a statement that the Respondent No.1 – Institute would pay the outstanding dues of

Petitioner as and when funds are available with them. It is seen that the demand notice dated 04.08.2020 issued by Petitioner is also duly acknowledged by Respondent No.1 – Institute and its liability towards Petitioner is accepted by them which is clearly evident from their reply dated 10.09.2020.

10. However the Labour Court has recorded that the original letter dated 10.09.2020 which was placed on record by Petitioner and marked as Exhibit ‘U-18 ’ was not proved in accordance with law. It is apposite to note that Petitioner placed the original copy of reply letter dated 10.09.2020 which was addressed by Respondent No.1 – Institute and hence the same falls under the category of ‘primary evidence’. Petitioner has led evidence to corroborate the said fact by filing his Affidavit of evidence. As the matter was proceeded ex-parte, there was no cross-examination of Petitioner and furthermore there is nothing placed on record to suspect the authenticity of letter dated 10.09.2020 issued by Respondent No.1 – Institute to Petitioner.

11. Next, the list prepared by the Respondent No.1 – Institute which is appended at Exhibit ‘Q’ – page No.65 of the Petition bears the stamp and seal of the Respondent No.1 - Institute. It enlists names and outstanding dues of such staff as on 31.03.2022 and bears Petitioner’s name at serial No.2 against which the outstanding salary amount of Rs.7,11,886/- is mentioned.

12. From the above it is clear that there is nothing placed on record to disprove Petitioner's claim to his outstanding salary dues of Rs.7,11,886/- which has been admitted by the Respondent – Institute in their reply dated 10.09.2020 as also the list prepared by them in 2022. Hence the balance of convenience clearly lies in favour of Petitioner.

13. In view of the above observations and findings, I am of the opinion that the impugned judgement dated 26.07.2023 deserves to be interfered with and is therefore quashed and set aside. Accordingly Writ Petition succeeds. Application under Section 33C(2) of the said Act viz. (I.D.A.) No.47 of 2021 filed by Petitioner before the Labour Court, Pune is allowed.

14. The outstanding amount of Rs.7,11,886/- is directed to be paid to the Petitioner by Respondent No.1 – Institute within a period of two weeks from today alongwith simple interest @12% per annum. In view of the conduct of the Respondent No.1 – Institute, the Respondent No.1 – Institute is directed to pay costs of Rs.25,000/- to the High Court Employees Medical Fund, Bombay High Court within a period of 4 weeks from today failing which the same shall be recoverable as arrears of land revenue through the Collector, Pune in the following Bank Account:-

- (1) **Account Name:** The High Court Employees Medical Welfare Fund at Mumbai.
- (2) **Bank Name and Branch:** Bank of India, Mumbai (Main) Branch.
- (3) **Account No.:** 000120110001337.
- (4) **IFSC Code:** BKID0000001

15. This Court appreciates the aid and assistance rendered by Mr. Mhatre, learned Advocate appointed through Legal Aid to represent and espouse the cause of Petitioner. His fees shall be released by the Legal Aid Department on production of a server copy of this order and due compliance as per law.

16. All Parties to act on a server copy of this order downloaded from the High Court website.

17. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

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