

EXH.O-3

Filed on :- 22/03/2018
Registered on :- 22/03/2018
Decided on :- 27/02/2019
Duration :- 00Y. 11M. 05D.

BEFORE JUDGE, 2nd LABOUR COURT, NASHIK.**RECOVERY APPLICATION (ULP) NO.1 OF 2018**

[CNR NO.MHLC15-000110-2018]

Shri. Jivraj Amruta Gaikwad

Age : 70 years, Occu.: Nil,

R/o. Devpada Karanjali, Pos. Devsane,

Tal. Dindori, Dist. Nashik-422402.

--- APPLICANT.

VERSUS

District Malaria Officer,

District Malaria Office,

Divisional Sandarbh Seva Rugnalaya

Campus, Government Building,

Shalimar Chowk, Nashik.

--- OPPONENT.

CORAM : SMT. JAMILA M.I. SHAIKH, JUDGE.

APPEARANCES : 1) Mr. B. S. Satale, Adv. for the Applicant.

2) Mr. P. R. Chandrakor, Adv. for the Opponent.

ORAL JUDGMENT**[Delivered on 27/02/2019]**

1. The present complaint is filed by the applicant under Section 50 of MRTU & PULP Act, 1971 for recovery of Rs.5,58,810/- with interest @12% being legal dues from the opponent.

2. The applicant's case is as under :

The applicant states that he was employed with the opponent and on 23.10.1986 he was illegally terminated which was challenged by him by filing Complaint (ULP) No.159/1987 before Labour Court, Nashik and by order dtd.30.11.1996 the applicant was directed to be reinstated within one month and to give back wages from 23.10.1986. It is submitted that the said order dtd.30.11.1996 passed by Labour Court was challenged by the opponent before the Hon'ble Industrial Court by filing Revision (ULP) No.185/1996. The Hon'ble Industrial Court modified the order of the Hon'ble Labour Court to the extent of grant of 50% back wages by its order dtd.12.03.2001. It is further submitted that the opponent thereafter file Writ Petition bearing No.2759/2002 before the Hon'ble High Court challenging the order of the Hon'ble Industrial Court. The Hon'ble High Court, vide order dtd.07.01.2016 dismissed the Writ Petition.

3. The applicant further states that the Hon'ble High Court has observed in its Judgment and have given finding that the applicant has completed 5 years at the time of his superannuation for the purpose of getting entitled to

pension. The opponent have not paid to the applicant the total amount of back wages from November 1986 to August 2002. The applicant is entitled for the back wages from 23.10.1986 till 31.08.2002 total 190 months and is also entitled for yearly increments of Rs.300/- and therefore by calculating everything and 50% of it comes to Rs.4,12,670/- as stated in Annexure-A. The applicant has further submitted that since his illegally termination was set aside and reinstatement with continuity in service was granted. He is also entitled for the amount of bonus from the year 1986 to the year 2002 totaling to Rs.73,070/- as stated in Annexure-B and also entitled for the leave encashment as if he would have been at work from 1986 to year 2002 and getting 30 leave every year as per the calculations given in Annexure-C totaling to amount of Rs.73,070/-. The applicant prayed that he is entitled to recover the total amount as per the details given in Annexure-A, B and C totaling to the tune of Rs.5,58,810/- and since the said amount was not paid within time as per the directions of Hon'ble Industrial Court, he is also entitled for interest @12% per annum on the total amount. Hence, prayed that application should be allowed and recovery certificate to be issued.

4. The opponent has filed say at Exh.C-4 wherein have denied all the averments and contentions made by the applicant in his application. It is submitted that the applicant was paid wages as per law and all legal dues, no amount is due from the opponent to be paid to the applicant. It is submitted that the applicant has made the present application with misleading

facts in order to gain sympathy of the Court. The opponent further submitted that the Government have stopped the payment of bonus and therefore there is no question of giving bonus to the applicant. It is further submitted that when the employees is at work his leaves are credited, but since the applicant was not on work, no leave was credited and therefore the applicant is not entitled for any leave encashment amount. Hence, prayed that the application should be dismissed with costs. Affidavit in support of the Say of Dr. Rajendra Rambhau Tryambake is filed at Exh.C-5.

5. On the rival submission of the parties following points arise for my determination and I have recorded my findings thereon due to reason discuss hereinafter.

POINTS

FINDINGS

1. Whether the applicant is entitled for recovery certificate for legal dues as claimed by him ?

Partly Yes.

2. What order ?

As per final order.

REASONS

6. I have gone through the material on record. Heard the Ld. Counsels for both sides at length.
7. **AS TO POINT NO.1 :-** The applicant has filed his affidavit at Exh.U-8 wherein he has reiterated the contents of his application. In support of his oral affidavit he has filed Court

orders alongwith list at Exh.U-2-A and copy of documents relating to his per month salary in the year September 2002 and July 2007 received under R.T.I. at Exh.U-11 (collectively), Annexure-A giving detail of 50% back wages from November 1986 to August 2002 at Exh.U-12. Hence, admittedly, in the present case, the applicant's termination was set aside and he was reinstated in service with continuity and grant of back wages of 50% from the date of termination till realization.

8. The Hon'ble High Court have not disturbed order and findings of the lower Courts in its order dtd.07.01.2016 passed in Writ Petition No.2759/2002. The opponents have not placed any evidence to show that applicant was paid any amount of back wages from the date of his termination till the date he was taken back in service. Hence, here the back wages to the extent of 50% from the date of termination till its realization seems to be due upon the employer i.e. the opponent and applicant is entitled for the recovery of the same.
9. It appears from the evidence brought on record that the applicant was taken back to work by way of interim reliefs order from 31.08.2002, but he was not paid the back wages as ordered and directed by the Labour & Industrial Court pending Writ Petition. The applicant has placed on record documents showing his wage scale on 24.10.1986 that he has received under RTI from the opponents at Exh.U-11. It is evident from the said documents and the information provided by the opponent that the applicant was receiving the wages as per pay scale 750-12-1870-E.B.-14-940 in the year 1986 and on

31.08.2002 his total salary was Rs.6,550/-, and in July 2007 his monthly salary was Rs.9,689/-.

10. Thus, admittedly, the information that are provided by the opponent under RTI alongwith salary certificate are admitted by the opponents. The applicant has calculated his wages accordingly from November 1986 to August 2002 and 50% of back wages is being calculated to the total sum of Rs.4,12,670/-. The applicant has filed his affidavit in chief wherein he has reiterated the contents of his application, he was cross examined by the opponent.
11. Nothing contrary was brought from the cross examination. The applicant have proved his wages that he used to receive in the year 1986 by obtaining salary certificate and other information through RTI from the opponents. The opponents have also not denied the same. The calculations that is provided by the applicant at Exh.U-12 though the opponents objected that the same has been calculated exhaustively, but the opponents have not placed on record any other total amount of back wages or showing different monthly wages than shown by the applicant. Hence, I have no hesitation to consider the calculation given by applicant at Exh.U-12.
12. Through the present application, the applicant is also claiming bonus and leave encashment. However, after perusal of the order and Judgment of Hon'ble Industrial Court passed in Revision Application (ULP) No.185/1996 dtd.12.03.2001, the Hon'ble Court has confirmed the order passed by Labour Court

granting relief of reinstatement with continuity of service. Therefore, it appears that the Labour Court has granted reinstatement with continuity, but no consequential benefit or relief has been granted by both the Courts. As per Section 50 of the MRTU & PULP Act, 1971 provision has been incorporated for granted for recovery of money due to the employee from an employer under an order passed by the Court under Chapter VI of the Act. The complaint of the applicant was filed under Section 28(1) of Chapter VI of the Act. Thus, the recovery of amount is restricted only to the order passed by the Court in the said complaint. As per the order, the applicant is granted reinstatement with continuity of service, but there is no specific order of consequential benefits, therefore, it deems to have been refused. Hence, the applicant's claim for bonus and leave encashment cannot be entertained or granted in the present application.

13. The applicant has also claimed interest on the amount @12%. However, considering that the present application was filed beyond the period of limitation, though the delay was condoned, but the opponents cannot be burdened by imposing interest from the date of order as the order was under challenge before the Hon'ble High Court. However, the opponents have not paid the back wages, even after the dismissal of the Writ Petition, therefore, in my view, the applicant is entitled for the interest on the amount.

14. Thus, the applicant in the present case is entitled for recovery of 50% back wages from the date of his termination i.e. 1986 till he was taken back to work in 2002, to the tune of

Rs.4,12,670/- alongwith simple interest @7% from the date of order from the opponent. Hence, I answer against the point No.1 in the partly affirmative. Thus, I pass the following order.

ORDER

1. Issue certificate to the Collector for recovery of amount of Rs.4,12,670/- (Rupees Four Lakhs Twelve Thousand Six Hundred Seventy Only) towards amount of 50% back wages alongwith simple interest @7% from the date of order till realization from opponent.
2. Office is hereby directed to comply.

Place : Nashik.

Date : 27/02/2019.

"JSK"

[SMT. JAMILA M.I. SHAIKH]

Judge,

2nd Labour Court, Nashik.

Argued on : 26/02/2019

Judgment dictated on : 27/02/2019

Judgment transcribed on : 28/02/2019

Judgment checked & signed on : 07/03/2019