

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 801/2019(S.B.)

Shri Prakash s/o Ganpat Kose,
Aged about 57 years, Occu. Service,
R/o Khandoba Ward No.1, Hinganghat,
District Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Public Works Department
Mantralaya, (Main Building),
1st Floor, Madam Kama Marg, Hutatma
Rajguru Square, Mumbai-400032.
- 2) Deputy Engineer,
National Highway Sub Division No.51,
- 3) Executive Engineer,
National Highway, Nagpur.

Respondents

Shri Miss. Shiba Thakur & Ayushi Tripathi, counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 16th September 2022.

JUDGMENT

Judgment is reserved on 24th August, 2022.

Judgment is pronounced on 16th September, 2022.

Heard Miss. Shiba Thakur & Ayushi Tripathi, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

The applicant was appointed as a Labourer on 01.07.1981. He challenged order of his removal dated 01.01.1983 by filing an application under Section 2(a) of the Industrial Dispute Act before Conciliation Officer, Nagpur. In this proceeding compromise was arrived at on 12.04.1984 as follows-

- १) सदरहु कामगाराला परत दि.१६.०४.१९८५ पासुन कामावर घेण्यात येत असल्याचे व दि. २१.०१.१९८३ पासुन त्यांच्या पूर्वीच्या नोकरीची सलगता देण्याचे मान्य करण्यांत आले आहे.
- २) सदरहु कामगाराला सध्या नागपूर बोरी रोडवर कामावर घेण्यात येत आहे.
- ३) या समेटाच्या दृष्टीने कामगाराने आपला खाली दिवसाचा पगाराचा हक्क स्वःखुशीने सोडला आहे.

अश्यारितीने या विवादात उभयपक्षांत समेट घडवून येत आहे. उभयपक्षांनी आज दि.१२.०४.१९८४ रोजी माझ्यासमोर स्वाक्ष-या केल्या.

By not allowing the applicant to join, the respondent breached a condition incorporated in the deed of settlement / compromise. The applicant challenged it in I.D.A. Case No.398/1984. Labour Court, Nagpur allowed it by order dated 27.11.1991 (Annexure A-2) by directing the respondents to pay backwages for the period 16.04.1984 to 31.08.1984. Due to non-compliance of this order the applicant filed I.D.A. No.18/1992. It was partly allowed by

order dated 21.08.1999 (Annexure A-3). By this order the amount of backwages payable to the applicant was quantified at, and scaled down to, Rs.63,424/-. By order dated 16.01.2006 (Annexure A-4) the applicant was permitted to withdraw this amount. The applicant then filed U.L.P.No.231/2006. In this proceeding, below exhibit 2, interim order was passed on 02.01.2007 (Annexure A-5) directing the respondents to provide work to the applicant as a Labourer during the pendency of the proceeding. Order dated 02.01.2007 was challenged in W.P.No.08/2009. Said Writ Petition was disposed of by order dated 20.03.2012 (Annexure A-6) by observing thus-

The main complaint is pending before the Industrial Court, Nagpur. In view of this, the Industrial Court, Nagpur, can be directed to expeditiously decide the said complaint. Pending the decision of the complaint, the interim order dated 12.01.2009 granted by this Court can be continued till the decision of complaint, subject to the condition that the petitioners shall provide work to the respondent-employee as and when it is available.

By judgment dated 04.12.2013 (Annexure A-7) U.L.P. No.231/2006 was partly allowed as under-

i] The complaint filed by the complainant is partly allowed.

- ii] It is hereby declared that the respondents have engaged in unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act by not implementing the Settlement dated 12.04.1984.***
- iii] The respondents are directed to cease and desist from engaging into unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act.***
- iv] The respondents are further directed to implement the Settlement dated 12-4-1984 and to provide work to the complainant.***
- v] The prayer of the complainant regarding wages from 1-1-1992 is rejected.***
- vi] No order as to costs.***

Being aggrieved *inter alia* by rejection of his prayer for grant of backwages w.e.f. 01.01.1992, the applicant filed W.P.No.5001/2014. It was decided by the judgment and order dated 25.01.2006 (Annexure A-8). Operative Part of this judgment and order is as under-

- (i) The Clause (V) of the operative part of order passed by the industrial Court in Complaint U.L.P. No. 231/2006 on 4th December 2013 is set aside.***
- (ii) The claim of the employee for wages for the period from 1st January, 1992 till he is reinstated, as per the settlement dated 12th April 1984 is upheld***

(iii) The employer shall pay the amount of wages receivable by the employee for the period from 1st January, 1992 till January, 2016 within three months.

If the amount is not paid within three months, the employer shall be liable to pay the interest, the interest being chargeable from 1st January 2016 till the amount is paid to the employee.

(iv) The claim of the employee for interest as made in the complaint, is rejected.

(v) Rule is made absolute in the above terms.

(vi) In the circumstances, the parties to bear their own costs.

This was followed by the G.R. dated 02.09.2016 (Annexure A-9). The G.R. *inter alia* referred to the fact that as per opinion of the Law and Judiciary Department order dated 25.01.2016 passed in W.P.No.5001/2014 was not fit to be challenged. It was ordered-

शासन निर्णय :- श्री.प्रकाश गणपत कोसे यांनी मा.उच्च न्यायालय, नागपूर येथे दाखल केलेल्या याचिका क्र.५००१/२०१४ प्रकरणी मा.न्यायालयाने दि.२५.१.२०१६ रोजी दिलेल्या आदेशास अनुसरून, तसेच अधीक्षक अभियंता, रा.म.मंडळ, नागपूर यांनी दि.०२.०८.२०१६ रोजी सादर केलेल्या प्रस्तावास व परिगणनेस अनुसरून, श्री.कोसे यांना दि.२१.१.१९८३ पासून रोजंदारी आस्थापनेवर घेण्यास; प्रस्तुत न्यायालयीन प्रकरणी जबाबदार असणा-या संबंधितांवर जबाबदारी निश्चित करण्याच्या अधीन राहून मान्यता देण्यात येत आहे. तसेच याचिका क्र. ५००१/२०१४ प्रकरणी मा.न्यायालयाने दि.२५.१.२०१६ रोजी दिलेल्या आदेशास अनुसरून, श्री. कोसे यांना दि.१.१.१९९२ ते दि.३१.१.२०१६ पर्यंतची वेतन थकबाकी रु.८,८६,०९४/- इतकी

रक्कम तसेच श्री.कोसे यांना माहे ऑगस्ट, २०१६ मध्ये रोजंदारी आस्थापनेवर पुनःस्थापित करावयाचे असल्यामुळे माहे फेब्रुवारी, २०१६ ते माहे जुलै, २०१६ (एकूण ६ महिने) या कालावधीतील वेतन थकबाकी रु.४६,३३२/- अदा करण्यास, सदर रक्कम अचूक परिगणित केल्याची जबाबदारी क्षेत्रिय कार्यालयावर निश्चित करून मान्यता देण्यात येत आहे.

सदर शासन निर्णय, सामान्य प्रशासन विभाग व वित्त विभागाच्या सहमतीने, सामान्य प्रशासन विभागाच्या अनौपचारिक संदर्भ क्र.११९२/का-१२, दि.६.८.२०१६ तसेच वित्त विभागाच्या अनौपचारिक संदर्भ क्र.२०२/व्यय-११, दि.१२.८.२०१६ अन्वये निर्गमित करण्यात येत आहे.

Consequential G.R. was then issued on 28.10.2016 (at page 68) which stated-

शासन निर्णय समक्रमांक दि.०२.०९.२०१६ अन्वये श्री.प्रकाश गणपत कोसे यांनी मा.उच्च न्यायालय, नागपूर येथे दाखल केलेल्या याचिका क्र.५००१/२०१४ प्रकरणी मा.न्यायालयाने दि.२५.१.२०१६ रोजी दिलेल्या आदेशास अनुसरून, श्री.कोसे यांना दि.०१.०१.१९९२ ते दि.३१.०१.२०१६ पर्यंतची वेतन थकबाकी रु.८,८६,०९४/- व माहे फेब्रुवारी, २०१६ ते माहे जुलै २०१६ (एकूण ६ महिने) या कालावधीतील वेतन थकबाकी रु.४६,३३२/- अशी एकूण रक्कम रु.९,३२,४२६/- अदा करण्यास शासन मंजूरी प्रदान करण्यात आली आहे. सदर शासन निर्णयातील परिच्छेद-१ नंतर खालीलप्रमाणे परिच्छेद-२ समाविष्ट करण्यात येत आहे.

२. सदर रक्कम मागणी क्र.एच-६, २०५९ सार्वजनिक बांधकामे, ८० सर्वसाधारण, ००१ संचालन व प्रशासन (५७) (०१) कार्यान्वयन योजनेतर भारीत (२०५९२८१३) या लेखाशिर्षाखाली खर्ची टाकण्यास मान्यता देण्यात येत आहे.

Thereafter, the impugned communication dated 08.05.2019 (Annexure A-10) was issued setting out undisputed chronology, and concluding as under-

याअनुषंगाने असे नमूद करण्यात येते की, मा.उच्च न्यायालय, नागपूर येथे आपल्यातर्फे दाखल केलेल्या याचिका क्र.५००१/२०१४ मध्ये दि.२५.०१.२०१६ रोजी आपणांस पुनःस्थापित करून दि.१.१.१९९२ ते जानेवारी २०१६ पर्यंत थकबाकी देण्याचे आदेश दिले. त्यानुसार आपणांस रु.९,३२,४२६/- इतकी थकबाकी अदा केलेली आहे. तसेच आपणांस प्रत्यक्षात दि.१५/९/२०१६ रोजी कामावर घेतलेले आहे. आपण यापूर्वी काम केलेले नाही. त्यामुळे काम नाही, वेतन नाही या शासनाच्या धोरणानुसार आपणांस प्रत्यक्षात काम केल्याच्या दिनांकापासून म्हणजेच दि.१५/९/२०१६ पासून रुपांतरीत अस्थायी आस्थापनेवरील देय फरकाची रक्कम अनुज्ञेय ठरते व त्याप्रमाणे अदा करण्यास दि.३१ जुलै, २०१८ च्या आदेशान्वये मान्यता दिली आहे. तसेच मा.कामगार न्यायालयाच्या दि.१२/४/१९८४ च्या समेटानुसार आपण स्वेच्छेने थकबाकीवरील हक्क सोडला आहे. त्यामुळे आपली रुपांतरित अस्थायी आस्थापनेवर घेतल्याच्या दिनांकापासून (दि.२१/१/१९८८) वेतन व भत्ते देण्याबाबतची मागणी मान्य करता येण्यासारखी नाही.

Representation dated 16.07.2019 (Annexure A-11) made by the applicant was turned down and this rejection was communicated to the applicant by respondent no.1 by letter dated 29.07.2019 (Annexure A-12). On 13.08.2019 the applicant submitted representation (Annexure A-13) stating therein as follows-

आपण माझ्याद्वारे कामगार आयुक्त नागपूर यांचे समक्ष दि.१२/०४/१९८४ रोजी तडजोड करून शासनाचे तसेच न्यायालयाच्या नियमाचे पालन केले नाही. मुद्दा क्र.३ नुसार समेटाच्या अंतर्गत मला तातडीने कामावर रुजू करून घेतले नाहीए कामावर घेतो असे आश्वासन देऊन मला दि.१२/०४/१९८४ ते दि.१४/०९/२०१६ पर्यंत समेटाच्या आदेशानुसार कामावर घेतले नाही, यात माझी चूक नसून शासनाची चूक आहे याला जबाबदार शासन आहे.

अस्थायी आस्थापनेवर घेतल्याच्या दिनांकापासून वेतन व भत्त्याची थकबाकी सविस्तर वस्तुस्थिती मान्य करता येण्यासारखे नाही, असे आपण कळविले हे मला मान्य नसून, माझी चूक नसून शासनाद्वारे मला कामावर घेण्यात विलंब झाला याला सुद्धा शासन जबाबदार आहे.

Grievances of the applicant still remain un-redressed. Hence, this application for following reliefs-

- (i) quash and set aside the impugned order dated 08.05.2019 and direct the respondent no.1 to release the back wages from 1.01.1992 to January 2016 in favour of the Applicant;**
- (ii) direct the respondents to maintain the service book of the applicant as per rule;**
- (iii) direct the respondents to release all the benefits admissible to the applicant;**
- (iv) direct the respondent to implement the settlement dated 12.04.1984, in its letter and spirit;**
- (v) grant any other reliefs, which will be deemed fit and proper in the facts and circumstances of the case;**

3. Reply of respondents 1 to 3 is at pp.78 to 82. According to them, the respondents have paid the backwages as directed by the Hon'ble High Court, the applicant was reinstated on 15.09.2016 and as per Government policy of "No work no wages" he was given C.R.T. benefits from the date of his actual joining i.e. 15.09.2016. Further contention of the respondents is that by settlement / compromise dated 12.04.1984 the applicant had voluntarily given up the claim for backwages and, therefore he was not entitled for wages on C.R.T.

4. Rejoinder of the applicant is at pp.83 to 88 in which he has asserted as follows-

- 1) According to the chart prepared by the respondents, the actual amount payable to the applicant was Rs. 28,93,301/-. However, he has received only Rs. Rs.9,97,227/-. On the contrary, the respondents in their reply stated that,**

they have released full back wages payable to the applicant. This contention is false and baseless. As the amount received by the applicant is not in accordance even as per the chart prepared by the respondents. A copy of the chart prepared by the respondent is annexed here as ANNEXURE-R1.

2) The respondents completely ignored the fact that the applicant was converted to CRT Casual Regular Temporary) Labour from 21.01.1988 vide Govt. Order dated 31.07.2018 on completion of 5 years of service. Therefore, he was entitled to all the benefits applicable to the CRT employee.

3) The fact remains that the applicant never refused to work with the respondents. However, it was the respondents who failed to give him work. Therefore, the Government policy "No Work, No Wages", is not at all applicable in the present case. As the fault is not on the part of the employee whereas, it is the employer who is at fault. Therefore, denying of back wages applicable to the applicant on this ground is not only illegal but also arbitrary.

5. Aforesaid contentions raised by the applicant in his rejoinder have not been traversed by the respondents. The charts attached to the rejoinder show that total amount (payable to the applicant was calculated at Rs.28,93,301/- the amount already paid was Rs.997,227/- and the amount which remained to be paid was Rs.18,96,074/-

The respondents have not disputed that these charts were prepared in their office. Contents of the O.A. as well as the rejoinder are fully supported by these charts.

6. The following observations made by the Hon'ble High Court in W.P.No.5001/2014 decisively support case of the applicant-

The Labour Court, in the earlier proceedings, has recorded that in spite of settlement dated 12th April 1984 the employer had not provided work to the employee and looking to the conduct of the employer, the Labour Court directed the employer to pay the wages to the employee. In the present case, the industrial Court has observed that the employer has failed to establish that the work was not available with it and as per the agreement dated 12th April 1984, the employer was required to provide work to the employee, I find that there is no justification for rejection the prayer of the employee for wages from 1st January 1992. Considering the findings recorded by the Labour Court in the earlier proceedings and the observations of the industrial Court in the present proceedings, in my view, the employee is entitled for the wages from 1st January 1992 as the employer has failed to provide work to the employee as per the settlement dated 12th April 1984 and the employer having failed to establish that the work was not available for being provided to the employee.

7. The applicant has relied on *“North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma and Others 2021 SCC OnLine SC 540.”* In this case following observations in

“Dayanand Chakrawarthy Vs. State of Uttar Pradesh (2013)

7SCC 595” have been quoted-

“48. ... If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of “no pay no work” shall not be applicable to such employee.”

8. The High Court in its judgment in W.P.No.5001/2014 referred to the finding recorded by the Labour Court that inspite of settlement dated 12.04.1984, the respondents had not provided work to the applicant. There was also reference to the finding recorded by the Industrial Court that the respondents had failed to establish that work was not available with them. Unless this was established by the respondents they could not have deviated from the relevant Clause of the settlement/compromise that they were bound to provide work to the applicant. It was thus, held by the High Court that the respondents had failed to provide work to the applicant as per settlement / compromise dated 12.04.1984.

9. Having regard to admitted facts of the case, findings recorded in W.P.No.5001/2014 and legal position laid down in North Delhi Municipal Corporation (Supra) which is applicable to

the facts of the case, the impugned communication cannot be sustained. I accordingly quash and set aside the same and further hold that the applicant is entitled to all the benefits applicable to C.R.T. employee w.e.f. 31.07.1988. He has partly received monetary benefits. The remainder shall be paid to him within three months from today. If the payment is not made within this period, the unpaid amount shall carry interest at the rate of 6% per annum. O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 16/09/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 16/09/2022.
and pronounced on
Uploaded on : 16/09/2022.