
(2014) 02 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No. 352 of 2012

Mahesh Prathamik School and Palna Kendra and Another	APPELLANT
Vs	
Sau Radhika Ninave and Others	RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Citation : (2014) 141 FLR 171

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : U.A. Patil, Advocate for the Appellant; S.B. Dhande and A.M. Deshpande, AGP, Advocate for the Respondent

Judgement

R.K. Deshpande, J.—Rule made returnable forthwith.

Heard the matter finally by consent of the learned Counsels appearing for the parties. The challenge in this petition is to the order dated 14.10.2011 passed by the 1st Labour Court at Nagpur in Misc. Application (IDA) 37/2010, rejecting the application for setting aside the ex parte order. The petition also challenges the order dated 16.6.2005 passed by the 1st Labour Court at Nagpur, in IDA Case No. 61/1997, whereby the petitioners are directed to pay an amount of Rs. 44,098/- to the applicants Smt. Radhikabai Ninawe and Rs. 58,800/- to the Sewantabai Muley towards difference of wages within one month from the date of the order.

2. There is a dispute raised by the petitioner regarding entitlement of the respondents to difference of salary. The claim of the respondent Nos. 1 and 2 was that they were working as peon, but were not paid salary accordingly. This fact is disputed. Undisputedly, the Secretary of the society expired on 13.6.2009 and therefore, the petitioner could not remain present either to cross-examine the witnesses examined by the plaintiffs or to examine the independent witnesses. In the judgment of this Court delivered on 10th January, 2013 in Writ Petition No. 5749/2012 (Mahesh Prathamik School and Palna Kendra and another

v. Ku. Anita Randal Dhuriya and another), involving the same kind of facts, this Court has allowed the writ petition and set aside the orders impugned by saddling costs of Rs. 6000/- (Rupees Six thousand). The relevant consideration is contained in last two paras, which are reproduced below:-

On hearing the learned Counsel for the parties and on consideration of the facts as narrated hereinabove and supported by the Roznama, it appears that an opportunity needs to be granted to the petitioners. The respondent No. 1 had not sued Mahesh Palna Kendra and Mahesh Prathamik School through any authority or Incharge. The petitioner No. 2 was sued through the Secretary, however, the Secretary expired in the year 2003 and the Counsel for the petitioners filed a pursis for withdrawal of his power. The said pursis was granted without considering whether the Counsel had followed the due procedure before withdrawing his power. So also, the Labour Court had not issued any notice to the petitioners on engagement of another Counsel. This is a fit case where an opportunity needs to be granted to the petitioners on payment of costs.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The application filed by the petitioners for setting aside the ex parte order is allowed subject to payment of costs of Rupees Six Thousand to the respondent No. 1 within a period of six weeks. The costs may be deposited in the Labour Court for the sake of convenience within the said period.

In view of above, this writ petition is allowed. The order dated 14.10.2011 passed by the Ist Labour Court at Nagpur in Misc. Application (IDA) 37/2010 and the order dated 16.6.2005 passed by the 1st Labour Court at Nagpur, in IDA Case No. 61/1997 are hereby quashed and set aside. The matter is remitted back to the Labour Court to decide the same in accordance with law after giving the parties an opportunity of being heard in the matter and also to examine and cross-examine the witnesses. The petitioners shall pay costs of Rs. 6000/- (Rupees Six Thousand) to each of the respondent Nos. 1 and 2 within a period of two weeks from the date of first appearance of the parties before the Labour Court. The parties to appear before the Labour Court on 24.2.2014. If the respondent Nos. 1 and 2 refuses to receive the amount, the same shall be deposited in the Labour Court and then the Labour Court shall proceed further with the matter. If the amount is not paid or deposited, as directed by this Court, the petition shall be treated to have been dismissed by this Court.

Rule is made absolute in these terms.