

-: ORDER ON APPLICATION BY FIRST PARTY DATED 20/11/2020 :-

(Date :- 20/11/2020)

After hearing both the parties, above titled reference was placed for passing of award along with 40 earlier references and remaining 99 references. It is matter of fact that, on earlier occasion before passing award in 40 references, the learned advocates for both the parties have submitted their argument at length for over all 139 references. It is admitted to both the parties that after hearing both the parties as above, 40 references out of 139 references were pending before the court and same are disposed by "Award" before spread out of pandemic corona virus. After giving full opportunity of being heard and submission of argument at length before the Court, 40 references are disposed by way of Award. None of the parties have raised grievance during the lock down period that they were not given opportunity of being heard. It is pertinent to note that both the parties through their learned advocates, have argued and put forth their submissions in all 139 pending references before Court out of which 40 references were disposed by Award. Other remaining 99 references were posted for passing of award on the scheduled date, however, dictation, typing, printing, checking of award of remaining matters was not possible because of World Wide Spread Out of Novel Corona Virus from March 2020 on words till October 2020.

2. First party's learned senior Advocate today after unlocking of lock down period has moved the instant application and urged to not to conduct remaining 99 references for the reasons mentioned in the application. Learned advocate for second party submitted his say to the application and denied all the contentions of First Party and prayed for rejection of the application. In the light of above factual aspects, now I proceed to discuss and decide the application as under.

3. **Concise version of the First Party in the application is as follows : -**

99 references under Industrial Disputes Act are pending before the Court and they are placed for final oral argument. It is stated that 99 references are having mostly and mainly similar facts. As per First Party, Second Party was served with office order stating that Second Party was superannuated after the completion of age of retirement as per service rules. These orders were not objected by Second Party or by Union in the First Party Sangh. Second Party accepted their all retirement benefits without any objection. After a lapse of 12 years, Second Party has raised the dispute stating that they were illegally terminated abruptly and they were not superannuated.

4. First party then averred that this court has disposed of the another 40 references on 18th of March, 2020 and 21st of March 2020 and Award was passed in favour of Second Party. Awards were published on notice board on 13/10/2020. Being dissatisfied by these awards, the First Party Sangh has approached the Advocate from Bombay and requested to approach the High Court, Bombay for the appropriate relief. The process is in progress. The First Party is very confident about success in Appeal.

5. It was then averred that, this Court requested both the parties to advance their oral argument along with case laws if any in order to dispose of pending references. It was stated that this court has taken view that the Second Party workmen are entitled to relief as the action of First Party is illegal. Therefore, this Court is likely to apply the same view and law disposed of the references in favour of workmen.

6. It was then stated that when the Court has taken a particular view, which is under challenge, it would not be just and proper to conduct the remaining references. If the Court insists upon to conduct the references, then First Party is ready to conduct the references. The out come of these references will be same as per previous Awards. Consequently, First Party would be required to approach Hon'ble High Court Bombay to the challenge the Awards. This would additional financial burden on the First Party to challenge the same awards again in the Hon'ble High Court.

7. Learned Advocate for the Second Party submitted his say to the application. The say given in one case is adopted in remaining references by submission of purshis to that effect and the same is on record. Second party workman stated that this application is not tenable in the eyes of law. Second party denied the contentions taken by the First Party. It was stated that both the parties have submitted their final argument at length and matters were placed for passing Award. Award in the remaining matters, could not be passed because World wide spread out of Corona Virus. Second Party workman is senior citizens and in such situation, it would not be justifiable to keep the matters pending before the court.

8. Heard learned senior Advocate for the First Party and learned Advocate for the Second Party at length. I have carefully gone through the contents of application and the say submitted on behalf of Second Party.

9. Admittedly as stated above, this Court has passed Award in 40 references vide Award dated 18th March, 2020 and 21st March 2020. All the 40 references are duly published on notice board on 13/10/2020. It means after 7 months of passing of award, those were published on notice board. There was ample time and opportunity for the First Party to challenge the Awards and obtain required orders to stay the hearing of remaining references pending before this Court. Even if it is held that First Party could not approach the Hon'ble High Court due to Spread out of pandemic virus, it is not clear from the record before me as to when they have in-fact approached the learned Advocate of Bombay High Court. It is also not clear as to when First Party has challenged the 40 Awards by filing writ petition before the Hon'ble High Court. The contention of the First party as taken in para-8 of the application that "when court has taken a particular view, which is under challenge", is not acceptable one in the absence of Photocopy of writ petition filed before the Higher authority. Furthermore, in my humble opinion, any matter can not be said to be under challenge, only because either of the party before the Labour court has moved an application without affidavit, verification, and pleads that the matter is under challenge because they have approached the Advocate to challenge the order or award in disposed matter. It is a matter of fact that this Court has not received any copy of Writ Petition from the Hon'ble Bombay High Court in 40 references. Also, it is matter of fact that this court has not received any directions from the Hon'ble Bombay High Court refraining this court from conducting 99 matters based on the orders passed in the writ petition in respect of 40 references.

10. There is no provision in the Industrial Disputes Act which will stop the Court from passing the Award when the matter before him is heard at length and in detail.

11. Another contention that, there will be additional financial burden on the First Party to challenge the 99 awards is not acceptable one. As contended by First party if they are confident of ultimate success in the appeal before the Hon'ble High Court, they may pray for cost of the proceedings to be recovered from Second Party. One more contention that, there would be multiplicity of proceeding is not persuasive to me. In my opinion, multiplicity of proceeding will take place if I do not pass the award in remaining 99 matters. It would be totally illogical and unjustifiable if I deviate from the view taken in earlier 44 references. Multiplicity of proceeding can be avoided only if the First Party challenges all the Awards collectively before the Hon'ble Bombay High Court. Hon'ble Bombay High Court in its sapience will unquestionably check and observe the reasoning given by this court while passing the awards, provided First Party prefers to appeal.

12. In the course of argument it was argued that Second Party will not get relief from the First Party as they are challenging the awards before the Higher authority. Here also the said contention is not convincing to me. If Hon'ble High Court confirms the view taken by this Court, First party would left with no option but to execute the order of the Court. On the other hand, if Hon'ble High Court disagrees with the view taken by this court, Hon'ble Lordship will give directions to this court which will

have to be scrupulously followed by this court if, in fact, any appeal or writ petition is preferred by the First Party.

13. It would not be justifiable to stop the dictation of remaining 99 awards for the reason that earlier 40 awards are under challenge, the proof of which is not before Court. First Party has not shown any relevant provision of the Industrial Disputes Act, whereupon this court is empowered to stop the proceeding and stay away from conducting the present reference.

14. In respect of the contentions taken in Para-2 of this application, it is matter of fact that contentions taken in para-2 of this application, are already argued at length at the time of hearing all the references before the court and I have given my reasoning thereon. Hence, there is no need to consider those contentions again at this juncture.

15. Here it is pertinent to note that First party has specifically pleaded in para-5 of this application that 99 references pending before this Court are having same facts and circumstances as were in 40 disposed cases. For the obvious reason, I do not find it logical to hear again the same arguments on same facts and circumstances, which are argued in the earlier 40 matters and take a different view in remaining 99 references. As rightly said by learned advocate for Second party, Second party is a senior citizen there is no reason for the court to stop the proceedings considering the age of Second Party workman.

16. As referenced above and in view of object of the act, I have tried to investigate and settle the industrial disputes by passing award in earlier 40 references. In my opinion, the parameters of disposed references are applicable to remaining 99 references. Therefore, I do not find any reason to stay away from conducting the remaining 99 references which are ready for passing of Award. With my above observations, I proceed to pass the following order,

ORDER

1. Application stands rejected.
2. The present reference be posted for passing of Award on the scheduled date.

Place :- Kolhapur.

Date :-20/11/2020.

(P.M. Maindargi)
Presiding Officer,
Labour Court No. I, Kolhapur.