

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**902 CIVIL APPLICATION NO. 13607 OF 2015
IN WP/4797/2004**

CHUNNEKHAN RAJEKHAN PATHAN AND OTHERS
VERSUS
RAYAJI NATHA AUTADE AND OTHERS

...

Advocate for Applicant : Mr. P.S. Dighe
AGP for Respondent No.3 to 4 & 10: Mr. N.T. Bhagat
Advocate for respondent No.7: Mr. N.R. Bhawar
Advocate for respondent No.9: Mr. V.R. Dhorde
Advocate for Respondents No.9 & 11 :Mr. V.D. Sapkal
Advocate for Respondent no.13 :Mrs. Asha Rasal

...

CORAM : **RAVINDRA V. GHUGE, J**
(Date : 2nd August, 2017.)

PER COURT :-

1 By this Civil application, the applicant has put forth prayer clause 'A' below paragraph No.16 which reads as under:-

(A) Grant this Civil application and direct the Respondent No.9 Liquidator/Deputy Registrar, Cooperative Societies, Aurangabad to pay the salary of the applicant of Rs.9,56,065/- as on 31.3.2015 and also further salary till today forthwith from the amount received from acquisition of land and for that purpose issue necessary orders; "

2 I have considered the submissions of the learned Advocates for the respective sides.

3 This application was earlier heard on 18.3.2016. On the statements of one of the non-applicants that the applicant watchman is resorting to unauthorized acts and is permitting encroachment, that this Court had directed an enquiry into the matter vide order dated 18.3.2016. There is no dispute that after conducting an inquiry, the report has been submitted along with the affidavit in reply filed by the Deputy Registrar Cooperative Societies on 17.5.2016. The litigating sides do not dispute that, the said report indicates that, this applicant has performed his duties of protecting the property at issue and there is no such encroachment, which can be attributed to the conduct of this applicant.

4 Leaned counsel for the liquidator strenuously submits that, there are no funds available to pay the monthly wages of the applicant. He further submits that there are many other claimants whose dues are also to be cleared.

5 I find from the record that, the liquidator passed a resolution on 12.1.2000 before the lodging of this proceedings,

by which the monthly wages of the applicant were settled at Rs.5,000/-. It is quite surprising that, without paying a penny to the applicant, a further resolution is passed on 2.1.2012, giving a pay revision to the applicant and his wages have been enhanced to Rs.6,000/-.

6 In the above backdrop, if the contention of the liquidator is to be accepted that, there were no funds to pay the monthly wages, it is quite peculiar and unusual that, he revises the pay package of the applicant from Rs.5,000/- to Rs.6,000/-, without paying the applicant a single penny. Revision of the pay package in such circumstances, indicates that the stand taken by the liquidator is apparently a pretense of showing willingness to pay and yet not having paid his monthly wages. In fact, it should have been the liquidator who should have approached this Court, by taking out a Civil Application for seeking orders as regards the payment of wages of the applicant, if he found himself incapable of making such a payment

7 It cannot be ignored that, it is the liquidator, who has to ensure the apportionment of the money to those claimants whose claims have been undisputed and crystallized. The monthly wages of the applicant cannot be disputed and have been crystallized by the resolutions passed by the liquidator.

8 Considering the above, it is for the liquidator to take steps to ensure that the monthly wages as well as all arrears, are paid to the applicant who has no source of income to feed himself and has yet been guarding the property at issue, which is considered to be a high valued property, without earning any amount and performing his daily duties as a watchman.

9 Considering the above, this Civil Application is allowed. The liquidator respondent No.9 is directed to take steps to clear all arrears of the monthly wages of the applicant Chunnekhan Rajekhan Pathan within a period of three months from today.

10 In so far as the age of the applicant is concerned, he is stated to be in between 60 to 62 years of age. He is an employee of the said society for decades and he is continued in the employment as a watchman.

11 Since an employee cannot work beyond his age of superannuation, the liquidator respondent No.9 along with the committee members appointed by this Court to oversee the liquidation activities, shall consider this aspect of further continuance of the applicant. In the event the committee concludes that, he has already crossed the age of his

superannuation, he shall be paid his monthly wages till his last day of working, with an option to the committee either to continue his service which would not be considered to be in continuance of his earlier employment with the society or may consider appointing another person in his place .

(RAVINDRA V. GHUGE , J)

vbd