

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 8503 OF 2019**

Shree. Vighnagar Sahakari Sakhar }  
Karkhana Ltd. Having address at }  
Nivruti Nagar, Shirol Brk., Junnar }  
Pune 410511 }  
Through its Managing Director } .. Petitioner

**Versus**

Jaisingh Barku Ghogare }  
Adult Indian Inhabitant having his address }  
At Yenere, Junnar, Pune. } .. Respondent

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**Mr. Anand Pai** a/w Mr. Vipul Patel, Mr. Rohit Bharwada i/b Haresh Mehta & Co. for the Petitioner.

**Mr. Nitesh Bhutekar** a/w Ms. Gargi Warunjikar & Mr. Aniket Nangare for Respondent.

**CORAM** : SANDEEP V. MARNE J.  
**RESERVED ON** : 17 JANUARY, 2024.  
**PRONOUNCED ON** : 23 JANUARY, 2024.

**JUDGMENT:-**

1) **Rule.** Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing and disposal.

2) Petitioner-Sugar Factory has filed this Petition challenging the Judgment and Order dated 10 April 2019 passed by Industrial Court, Pune dismissing Revision Application (ULP) No. 83 of 2018 filed by Petitioner and thereby confirming the Judgment and Order dated 14 March 2018 passed by the 2<sup>nd</sup> Labour Court, Pune. The Labour Court has held that Petitioner has indulged in unfair labour practices and has directed reinstatement of Respondent by paying him full back-wages from the date of termination of his services.

3) Petitioner is a Co-operative Society engaged in the business of manufacturing sugar at its factory at Nivruti Nagar, Shirolu Budruk, Junnar, District Pune. Respondent came to be appointed with Petitioner Sugar Factory in the year 1991 and was conferred permanency on the post of 'Fieldsman' in the year 1994. Respondent was placed under suspension by Order dated 30 April 2003 in contemplation of domestic enquiry. On 4 June 2003, Respondent was served with chargesheet levelling three charges. In the first charge, it was alleged that Petitioner unauthorizedly and illegally signed a slip in respect of sugarcane by replacing Cane Weight Receipt bearing No. 4091 of Shri. Kiran Tanaji Gholap with Cane Weight Receipt No. 199752 in the name of Shri. Avinash Jairam Aher. In the second charge, it was alleged that the Respondent, in connivance with Shri. Shantaram Bhaguji Dongare, illegally showed supply of sugarcane by Shri. Avinash Jairam Aher, who had actually not cultivated sugarcane with a view to legalize nomination filed by him for sugar factory elections. In the third charge, it was alleged that Respondent was unauthorizedly absent from 9 March 2003 to 29 April 2003 without sanction of leave.

4) Respondent denied the charges by representation dated 17 June 2003. A domestic enquiry was conducted into the charges and the

Enquiry Officer submitted his report dated 10 August 2006 holding that the charges levelled against the Respondent were proved. Based on the findings of the Enquiry Officer, Petitioner-Sugar factory passed Order dated 1 September 2006 dismissing the Respondent from service.

5) Aggrieved by the penalty Order dated 1 September 2006 dismissing him from service, Respondent approached Labour Court, Pune, by filing a Complaint under provisions of Section 28 (1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU and PULP Act**). The Complaint was filed under Item 1 (a), (b), (d), (f) and (g) of Schedule IV of the MRTU and PULP Act, which was numbered as Complaint (ULP) No. 109 of 2006. The Complaint was resisted by Petitioner by filing a Written Statement. Labour Court passed an Order on preliminary issue on 9 April 2010 holding that the enquiry was fair and proper as per principles of natural justice. Both sides thereafter led evidence. Respondent examined himself as a witness. The Petitioner examined Shri. B. S. Ghule as its witness. The Labour Court thereafter delivered Judgment and Order dated 15 November 2014 allowing the Complaint and directing the Petitioner to reinstate Respondent in service with full back-wages. Petitioner filed Revision Application (ULP) No. 87 of 2014 before the Industrial Court challenging the Labour Court's Order dated 15 November 2014. The Revision Application was allowed by setting aside an Order of the Labour Court. Industrial Court however remanded the proceedings to the Labour Court for deciding the issue of perversity afresh by giving an opportunity to the Petitioner to justify its action by proving the charges before the Labour Court.

6) In the remanded proceedings, Petitioner filed application seeking a direction to Respondent to lead evidence in respect of Issue No.2A.

The said Application was rejected by the Labour Court by Order dated 15 December 2017 holding that it was for the Petitioner to adduce evidence to prove the charges. The Order dated 15 December 2017 passed by the Labour Court was challenged by Petitioner before the Industrial Court by filing Revision Application (ULP) No. 266 of 2017, which came to be dismissed by the Industrial Court vide Order dated 21 December 2017.

7) Petitioner thereafter adduced evidence of Shri. Gorakhnath Ganpat Ukirde and Shri. Shekhsingh Sureshsing Pardeshi for proving the misconduct of Respondent before the Labour Court. After considering the evidence adduced by the Petitioner, the Labour Court passed a Judgment and Order dated 14 March 2018 allowing the Complaint and set aside the dismissal Order with directions to the Petitioner to reinstate the Respondent in service with full back wages. Petitioner's Revision Application (ULP) No. 83 of 2018 has been dismissed by the Industrial Court by Judgment and Order dated 10 April 2019, which is the subject matter of challenge in the present Petition.

8) Mr. Pai, the learned counsel appearing for Petitioner submitted that the impugned Orders passed by the Labour Court and Industrial Court are *ex-facie* erroneous. That, both the Courts have erred in not appreciating that in Complaint filed under Item 1 (a), (b), (d), (f) and (g) of Schedule IV of the MRTU and PULP Act, it was incumbent for the Respondent to plead and lead evidence to establish that he has either been victimization or that penalty order is issued in colorable exercise or that penalty is for false reasons. That in absence of pleadings and evidence in support of Items (a), (b), (d), (f) and (g) unfair labour practice cannot be established and therefore the complaint filed by Respondent ought to have been dismissed. Mr. Pai would submit that a mere demonstration of illegality in a dismissal

order in the absence of unfair labour practice is not sufficient for allowing a complaint filed under Section 28 of the MRTU and PULP Act. That, the evidence led by Respondent at the first stage of proceedings (prior to the recording of the finding of perversity) is irrelevant and that after recording the finding of perversity, Respondent ought to have adduced evidence to prove unfair labour practices by Petitioner. That in absence of such evidence being adduced by Respondent, his complaint ought to have been dismissed.

9) Mr. Pai would further submit that the finding of perversity recorded by the Labour Court and Industrial Courts are unsustainable. He would take me through the evidence of two management witnesses to demonstrate that the charges were successfully proved before the Labour Court. That, the initial burden of proof was on the Respondent and not on the Petitioner. Mr. Pai would further submit that the Labour Court has erred in awarding full back wages to the Respondent ignoring the evidence that the Respondent was gainfully employed. Taking me through the cross-examination of Respondent, Mr. Pai would submit that Respondent admitted that he was performing labour work. That, gainful employment includes self-employment whereby income is generated. In support of his contention, Mr. Pai would rely on the Judgment of Apex Court, ***North-East Karnataka Road Transport Corporation***<sup>1</sup>.

10) *Per contra*, Mr. Bhutekar the learned counsel appearing for Respondent would oppose the Petition and support the Orders passed by the Labour Court and Industrial Court. He would submit that the Petitioner was not able to prove misconduct through evidence adduced before the Labour Court. That, Respondent was implicated in false charges and falsity in charges is established before the Labour Court. That, it has been proved by

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<sup>1</sup> North-East Karnataka Road Transport Corporation Vs. M. Nagangounda (2007) 10 SCC 765

way of a letter dated 3 March 2003 of Shri. Sasane that Respondent was orally instructed to show  $\frac{1}{4}$  share of sugarcane of Shri. Kiran Tanaji Gholap in the name of Shri. Avinash Jairam Aher. That, Respondent merely followed the directives of the then-in-charge Executive Director. That since charges are not proved before the Labour Court, reinstatement with full back wages is a natural corollary. He would contest the contention of Mr. Pai about gainful employment of Respondent and submit that a mere stray statement of helping father in agricultural activities would not amount to gainful employment by Respondent. He would pray for the dismissal of the Petition.

11) Rival contentions of the parties now fall for my consideration.

12) In the domestic enquiry, Respondent faced three charges essentially arising out of two incidents. The first two charges are in respect of showing some portion of of sugarcane cultivated in the land of Shri. Kiran Tanaji Gholap against the name of Shri. Avinash Jairam Aher. The charge alleged that this was done by Respondent with a view to validate the nomination filed by Shri. Avinash Jairam Aher for contesting the election of the sugar factory. The second charge is about remaining unauthorisedly absent from 9 March 2003 to 29 April 2003.

13) Petitioner examined Shri. Gorakhnath Ganpat Ukirde, Chief Agricultural Officer to prove the first element of charge in his examination in chief. The said witness has stated that the Respondent did not have the authority to show or issue a slip in respect of the supply of sugarcane belonging to Shri. Kiran Tanaji Gholap in the name of Shri. Avinash Jairam Aher. The witness has deposed that Shri. Avinash Jairam Aher had submitted application for showing some portion of the sugarcane of Shri. Kiran Tanaji Gholap in his name on the ground that water

supply for the cultivation of sugarcane in the field of Shri. Gholap was through lift irrigation Shri. Avinash Jairam Aher. The witness further stated that the Respondent was supposed to scrutinize the application of Shri. Aher and produce relevant documents before Mr. Sasane, Incharge Executive Director. That, Respondent failed to do so and without obtaining permission of the Executive Director, Respondent proceeded to unauthorisedly change the sugarcane supply Slip No. 4091 issued in the name of Shri. Gholap and issued Slip No. 199752 in the name of Mr. Avinash Jairam Aher.

14) As against the above evidence of Petitioner's witness Shri. Gorakhnath Ganpat Ukirde, the Labour Court has considered the documents produced in the domestic enquiry and also the cross-examination of Mr. Sasane, Incharge Executive Director recorded during the domestic enquiry. It appears that the said Incharge Executive Director Shri. Sasane had written a letter dated 3 March 2003 to Shri. Avinash Jairam Aher in response to Shri. Aher's Application dated 15 February 2003. The said letter dated 3 March 2003 read thus:

"तुमच्या दिनांक १५/२/२००३ च्या अर्जातील विनंतीनुसार श्री किरण तोनाजी घोळप यांच्या ऊसापैकी एक चतुर्थांश क्षेत्रातील ऊस तुमच्या नावावर कारखान्यास पाठविण्यासंबंधीचे आवश्यक ते कागदपत्र मिळाले असून तुम्हास तुमच्या विनंतीनुसार करण्यास परवानगी देण्यात येत आहे. याबाबत योग्य ती रितसर परवानगी कार्यकारी संचालकांकडून दोन दिवसात घेवून त्याबद्दल तुम्हाला कळविण्यात येईल.

सदरचा ऊस तुमच्या नावावर पाठविण्यासाठी मी तुम्हाला दि. २/३/२००३ रोजी रात्री तोंडी परवानगी दिलेलीच आहे. याबाबत जुन्नर गटाच्या संबंधीत अधिका-यांना तोंडी आदेश दिलेले आहेत. तुमच्या मागणीनुसार हे पत्र तुम्हाला देण्यात येत आहे."

15) Thus by letter dated 3 March 2003, the Incharge Executive Director specifically informed Shri. Aher that permission was being granted as requested by him for showing 1/4 sugarcane grown in the field of Shri. Gholap in Shri. Aher's name. It was further stated that after taking due

permission from the Executive Director, intimation would be issued in two days. Additionally, the Incharge Executive Director stated in the said letter the oral approval for allotment of 1/4 sugarcane in the name of Shri. Aher was already issued in the night of 2 March 2003 and necessary directives in that regard were given to concerned officers of Junnar Gat. This letter dated 3 March 2003 indicates that the sugar factory had already decided to allot 1/4 of the sugarcane grown in the field of Shri. Gholap in the name of Shri. Aher and that oral directives were issued to the concerned Officers (Respondent) to do the needful. Thus the letter dated 3 March 2003 conclusively demolishes the charge levelled against Respondent about unauthorised allotment of 1/4 sugarcane grown by Shri. Gholap in the name of Shri. Aher. I do not find any perversity in the finding recorded by the Labour Court about the first charge.

16) The second charge faced by Respondent was about unauthorised absence from 9 March 2003 to 29 April 2003. However, it appears that the attendance muster for the months of March and May 2003 was not produced by the Petitioner. Labour Court has taken note of Respondent's Application dated 17 March 2003 addressed to the Executive Director stating that Shri. Sasane directed him not to report for duties from 13 March 2003 onward. The Labour Court considered the entire evidence on record with regard to the charge of unauthorized absence and has held that there is no evidence to prove the same.

17) After considering the findings of fact recorded by the Labour Court and upheld by the Industrial Court, I am not inclined to interfere in the same in exercise of the jurisdiction under Article 227 of the Constitution of India. I, therefore find that Petitioner was not able to prove both the elements of charges levelled against Respondent before the Labour Court.

No serious error is traced in the findings recorded by the Labour Court and Industrial Court in this regard.

18) The next issue is about the relief of reinstatement and back wages. Before I deal with the issue of reinstatement of Respondent in service, it would be necessary first to deal with the issue of back wages. Mr. Pai has sought to contend that the Respondent was gainfully employed after dismissal from services. He has taken me through some of the admissions given by Respondent in his cross-examination. The relevant portion of his cross-examination read thus:

"हे म्हणणे खरे नाही माझी स्वतःची ऊस शेती आहे. माझे वडीलांचीही ऊस शेती आहे. माझी ऊस शेती असून मी कारखान्याला ऊस पुरवठा करतो. हे खरे नाही. २००६ ते आजपर्यंत मी कोणत्याही साखर कारखान्याकडे अर्ज केला नाही. सध्या माझे वय ४१ वर्षे आहे. माझ्या कुटुंबात मी, पत्नी दोन मुले व आई वडील आहेत. दोन भाऊ असून ते विभक्त राहतात. माझी मुलगी १४ व मूलगा १२ वर्ष वयाचा आहे. माझी पत्नी नोकरीस नाही. मी मोल मजूरी करतो. मी वडीलांची थोडीफार शेती आहे तेथे करतो व बाकी वेळी बाहेर करतो. वडीलांच्या शेतामध्ये गाजर, टोमॅटो हे पिक सध्या आहेत. येणारे तालूका जुन्नर येथे आहे. आमचे घर गावात आहे. घर वडीलांचे आहे. माझ्या मुलांच्या शिक्षणाचा खर्च मी पाहतो. हे म्हणणे खरे नाही की मला शेतीला भरपूर उत्पन्न आहे म्हणून नोकरी करत नाही."

It is based on the statement of Respondent that he works as a labour, Mr. Pai has sought to draw an inference that Respondent is gainfully employed. He has relied on the Judgment of the Apex Court in ***North-East Karnataka Road Transport Corporation*** (Supra) in support of his contention that gainful employment includes self-employment. After considering the deposition of Respondent in the cross-examination, it is difficult to hold that there was a continuous form of gainful employment for him. At the highest, it can be inferred that Petitioner has helped his father in cultivation of agricultural land and at sometimes, he may have worked as laborer. This cannot be treated as gainful employment.

20) It appears that the Respondent has not yet been reinstated in service despite the Order of the Labour Court being passed on 14 March 2018. Mr. Bhutekar has submitted that Respondent is left with 7 to 8 years of service before his retirement. Considering the overall conspectus of the case and having held that the Petitioner was unsuccessful in proving charges before the Labour Court, I am of the view that reinstatement of Respondent in service may not be appropriate considering the unsavory relationship between the parties. The employer and employee have engaged themselves in bitter litigation for the last 18 long years during which time, the respondent is out of service. The Respondent has been dismissed from service on 1 September 2006. Prior to that, he was placed under suspension on 30 April 2003. Considering the constitution of the Petitioner, which is a Co-operative sugar factory, it may not be appropriate for the Respondent himself to expect fair treatment after being reinstated in service. In such circumstances, award of lump-sum compensation in lieu of reinstatement and back-wages would be the appropriate remedy in the facts and circumstances of the present case.

21) Mr. Pai has placed on record a statement indicating wages payable to Respondent from September 2006 onwards. The statement is prepared by taking into consideration wage rise from time to time. As per that statement, the approximate amount of back-wages payable to Respondent would be to the tune of Rs. 40 to 42 lakh. In pursuance of the Order passed by this Court on 4 August 2022. Petitioner has deposited an amount of Rs.35,00,000/- in this Court on 6 August 2022. Considering the interest generated on the said amount of Rs. 35,00,000/-, in my view, permitting Respondent to withdraw the deposited amount for Rs. 35,00,000/- with accrued interests would be the adequate amount of lump-sum compensation payable to him.

22) I accordingly proceed to pass the following Order.

**ORDER**

- i) The Judgment and Order dated 14 March 2018 passed by Labour Court, Pune, in Complaint (ULP) No. 109 of 2006 and the Judgment and Order dated 10 April 2019 passed by Industrial Court in Revision Application (ULP) No.83 of 2018 are modified to the extent that Respondent shall be entitled to lump-sum compensation in lieu of reinstatement and back-wages.
- ii) Towards his entitlement to receive such lump-sum compensation, the Respondent shall be permitted to withdraw the amount of Rs.35,00,000/- deposited by Petitioner in this Court along with accrued interest.
- iii) In addition to the lump-sum compensation so awarded, Respondent shall also be entitled to gratuity as per the provisions of the Payment of Gratuity Act for the services rendered by him from the date of initial appointment till today. Gratuity amount shall be computed by considering the last pay as indicated in the Statement provided to the Court as on date of passing of this Order. The amount of gratuity so calculated shall be paid by Petitioner to Respondent within 8 weeks.
- iv) Beyond the lump-sum compensation so awarded and gratuity, Respondent shall not be entitled to any other amounts from Petitioner.

23) With the above directions, the Writ Petition is **disposed of**. Rule is made partly absolute.

**[SANDEEP V. MARNE J.]**