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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5418 OF 2015

**PRAKASH AWADAJI SHINDE
VERSUS
THE LIQUIDATOR, PARTNER SAHAKARI SAKHAR KARKHANA LTD,
AHMEDNAGAR**

...
Advocate for Petitioner : Shri Barde Parag Vijay.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th October, 2015

Per Court:

1 The grievance of the Petitioner is that Revision (ULP) No.65/2013 which was specifically filed for seeking back-wages which were denied by the Labour Court, has been mechanically dismissed by the Industrial Court vide the impugned judgment dated 05.12.2014.

2 The Petitioner submits that he was terminated from service on 07.12.2006 when the Respondent stopped providing work to the Petitioner. His continuous service from 01.08.1989 was abruptly interrupted causing break in service from 07.12.2006.

3 The Petitioner, therefore, preferred Complaint (ULP)

No.42/2008 for challenging his oral termination. In view of the interim relief granted by the Labour Court, the Petitioner was reinstated in employment on 25.07.2010. As there was delay caused in filing the complaint, time was spent in seeking condonation of delay.

4 The Petitioner submits that as the Respondent had taken a ground of abandonment of service and no procedure was followed while dispensing with the service of the Petitioner, the Labour Court by the judgment dated 18.11.2013 has allowed the complaint granting reinstatement with continuity of service. The back-wages for a period of about 30 months were denied.

5 The Petitioner submits that being aggrieved by the denial of back-wages, the revision was preferred only for seeking full back-wages. The judgment of the Labour Court was assailed only to that extent. Specific grounds were raised before the Industrial Court in the revision petition. By the impugned judgment dated 05.12.2014, the revision petition has been dismissed.

6 Shri Barde points out that the Industrial Court has copied paragraphs 22 and 23 of the judgment of the Labour Court in the impugned judgment at paragraphs 17 and 18. There is no difference of

even a single word. It is purely a case of copy and paste.

7 He further submits that the Industrial Court has not considered the grounds in the revision petition put forth by the Petitioner. There was no reason for the Industrial Court to deny the back-wages to the Petitioner. He, therefore, prays for setting aside of the impugned judgment and that this petition be allowed. Alternatively, he also prays for a remand of the revision petition.

8 I have considered the submissions of the Petitioner as recorded herein above. With his assistance, I have gone through the grounds raised in the revision petition.

9 It is not a straitjacket formula to be followed while granting back-wages to the employee, whose termination has been set aside after having been found to be unsustainable. In the case of non compliance of Section 25F of the Industrial Disputes Act, 1947, the Apex Court has recently ruled in the following three cases that there can be no curing of this serious legal infirmity and hence, the relief of reinstatement can be granted:-

- (a) *Sudarshan Rajpoot v/s Uttar Pradesh Road Transport Corporation, **(2015) (2) SCC 317.***

- (b) *Mackinnon Mackenzie and Company Limited v/s Mackinnon Employees Union*, **2015 (4) SCC 544**.
- (c) *Ajaypal Singh v/s Haryana Warehousing Corporation*, **2015(6) SCC 321**.

10 However, it is not a mandate that once the reinstatement is granted, the back-wages should be mechanically granted. The Apex Court, in the case of *Gauri Shanker v/s State of Rajasthan*, **2015 (2) CLR 497**, has held that in cases when the termination is void ab-initio for non compliance of the mandatory provisions of the Industrial Disputes Act, 1947, the reinstatement with 25% back-wages can be granted to the employee to soften the rigours of litigation and unemployment.

11 However, in the instant case, the Petitioner has been reinstated in service by way of an interim order passed by the Labour Court. The delay caused in filing the complaint, which was subsequently condoned by the Labour Court, cannot be construed to give any advantage to the Petitioner for claiming back-wages.

12 Be that as it may, it has come on record in the cross-examination of the Petitioner before the Labour Court that he was doing the labour work to meet household expenses. However, there is no

evidence on record to indicate that the Petitioner took steps or made efforts for seeking alternate employment and that despite his efforts, he was unsuccessful in acquiring the employment.

13 In the light of the above, I do not find that this petition deserves to be entertained. The conclusion drawn by the Labour Court does not appear to be perverse or erroneous. The continuity of service has been granted thereby, maintaining the length of service of the Petitioner from 01.08.1989.

14 As such, this Writ Petition is dismissed.

(RAVINDRA V. GHUGE, J.)