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

WRIT PETITION NO.4183 OF 1994
WITH
WRIT PETITION NO.4191 OF 1994

The Executive Engineer,
Maharashtra State Electricity Board,
Urban cum Rural Division,
Vidyut Bhavan, Nanded.

...PETITIONER

-VERSUS-

Tantrik Kamgar Union,
Maharashtra State Electricity Board,
through Sattar Khan Mohd. Khan,
Circle Secretary, Nanded Circle,
Nanded.

...RESPONDENT

...
Advocate for Petitioners : Shri A.S.Shelke.
Advocate for Respondents : Mrs.A N Ansari.

...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 10th September, 2015

Oral Judgments:

1 Both these petitions were admitted on 28.11.1994.
Subsequently, by the order dated 03.09.2007, the interim relief was refused.

2 Both the petitions are in between the same litigating parties.
The Petitioner is aggrieved by the judgment and order dated 21.03.1992

delivered by the Labour Court in Complaint (ULP) No.73/1985 and the judgment of the Industrial Court dated 12.10.1994 delivered in Revision (ULP) Nos.94 and 95 of 1994 (old numbers 23 and 24 of 1992).

3 The Labour Court had entertained the complaint filed by the Union on behalf of its members, namely, Shaikh Razak Nabisab, Gauakhar Miyaja Khan, Babuniya Shaikh Farid, Gukmir Khan Afsar Khan and Mesood Khan Miyakhan Pathan, by which the Labour Court granted reinstatement with continuity of service. However, by applying the principle of “No Work- No Wages”, the back-wages were denied.

4 By the impugned judgment of the Industrial Court, Revision (ULP) No.95/1994 filed by the Establishment was dismissed and Revision (ULP) No.94/1994 filed by the Union seeking back-wages was allowed and full back-wages were granted.

5 It is not in dispute that after the Labour Court granted reinstatement, these employees have been reinstated in employment and may have also superannuated on attaining the age of retirement in the light of the fact that they were working from 1976 (two cases) and 1981-1982 in respect of all other employees. These petitions to the extent of reinstatement and continuity are, therefore, rendered of an academic

interest. It would be harsh to reopen this issue keeping in mind that the Respondents have settled in employment for more than 20 years.

6 Shri Shelke, learned Advocate for the Petitioner/ Establishment, has however, seriously criticized the conclusions of the Industrial Court to the extent of grant of full back-wages. The grievance of Shri Shelke is on the basis of the evidence recorded before the Labour Court. He points out that the workers had admitted in cross-examination that they had earned some wages during the period of non employment. The Labour Court had considered this aspect and had also concluded that the principle of “No Work- No Wages” would be applicable.

7 He further submits that the Industrial Court had noted that the workmen had earned some wages during the period of non employment by working elsewhere, going by their admissions in the cross-examination. However, the Industrial Court concluded that the principle of “No Work- No Pay” was generally applicable in the case of illegal strike and as such, the back-wages deserve to be granted.

8 Mrs.Ansari, learned Advocate for the Respondent/ Union, has strenuously supported the conclusions of the Industrial Court. She submits that merely because the principle of “No Work - No Pay” is applicable, it

should not be stretched to the extent of permitting the Petitioner Establishment to exploit the workers and take advantage of its own wrong.

9 She submits that merely because the workmen had earned some wages during their period of unemployment, would not mean that they should be deprived of their back-wages. She further adds that this Court had refused the interim relief to the Petitioner Establishment even to the extent of back-wages.

10 I have considered the submissions of the learned Advocates on the aspect of back-wages. It has been admitted in cross-examination by the workers that they were working elsewhere and earning some wages during their unemployment. They have not adduced evidence before the Labour Court to specifically establish their periods of unemployment since they had admitted of having earned some wages elsewhere during the period of their unemployment. Had they specifically established the periods during which they were not gainfully employed and had no source of earning, the conclusions of the Industrial Court could have been sustained.

11 It appears that the Industrial Court has proceeded on the

premise that the principle of “No Work - No Pay” is attracted only in the case of illegal strike. The said conclusion is misconceived.

12 In the light of the above and considering the fact that the Respondents/ Employees were reinstated after the decision of the Labour Court, I am unable to agree with the conclusion of the Industrial Court that they deserve full back-wages. Nevertheless, the Respondents/ Employees would be entitled for full wages from the date of the judgment of the Labour Court.

13 As such, the first petition challenging the conclusion of the Labour Court and the Industrial Court of granting reinstatement with continuity of service, stands dismissed. Rule is discharged.

14 The second petition is partly allowed to the extent of setting aside the direction of the Industrial Court of granting full back-wages w.e.f. 30.06.1985. It is, however, clarified that the Respondents/ Employees would be entitled for full wages from the date of the judgment of the Labour Court which is 21.03.1992 till their date of reinstatement. Rule is, therefore, partly made absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)