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

WRIT PETITION NO. 3284 OF 1997

- 1 The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Jalna.
- 2 The Deputy Engineer,
Minor Irrigation,
Sub-Division, Zilla Parishad, Jalna. ..PETITIONERS

-VERSUS-

- 1 Iqbal Ahmed s/o Abdul Waheb,
Age : 47 years, Occ : Service,
R/o House No.1-5-9, Modikhana,
Jalna, Tq. & Dist.Jalna.
- 2 The State of Maharashtra.
Copy to be served on the
Government Pleader, High Court
of Judicature of Bombay,
Bench at Aurangabad. ..RESPONDENTS

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Mr.Sachin Kuptekar h/f Mr.VD.Salunke, Advocate for the Petitioners.
Mr.A.G.Dalal, Advocate for Respondent No.1
Mrs.VA.Shinde, AGP, for Respondent No.2/State.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 02nd July, 2015**

Oral Judgment:

- 1 The Petitioners have challenged the judgment and order dated 03.09.1996 delivered by the Industrial Court, Jalna in Complaint

(ULP) No.457/1994 (old No.435/1990). The complaint was allowed by the impugned judgment.

2 By the order dated 21.08.1997, an ad-interim relief in terms of prayer clause (C) was granted pending admission of this petition.

3 This Court by order dated 02.12.1998 had directed the Tahasildar, Jalna to file an affidavit explaining as to whether, the Respondent No.1/ Employee was eligible for the benefits under the scheme framed by the Government of Maharashtra in December, 1995 which was approved by the Honourable Supreme Court.

4 By order dated 25.01.1999, this Court admitted the petition.

5 Having heard the learned Advocates appearing for the respective sides, the undisputed factors in this case are as under:-

- (a) The Respondent joined the Petitioner on 16.07.1984 as an employee.
- (b) The wages were at the rate of Rs.300/- per month consolidated.
- (c) Intermittent breaks in service were introduced.
- (d) The Respondent was terminated on 31.08.1989 though he

claims that he was terminated on 16.08.1990.

(e) Complaint (ULP) No.457/1994 (old No.435/1990) was filed on 07.09.1990.

(f) Prayer clauses (A) and (B) set out in the complaint read as under:-

“(A) It may be held and declared that the respondents are engaging or have engaged in unfair labour practice by violating the provisions of Item No.5, 6 and 9 of Schedule IV of MRTU & PULP Act, 1971.

(B) It may be held and declared that the oral termination dated 16.08.1990 is an unfair labour practice engaged by the respondents.”

(g) The Petitioners filed their written statement and below paragraph 2(b), it was specifically contended that the work of the Respondent was sub-standard. He was issued the show cause notice on 10.05.1988. He failed to supply tap water to the villagers and finally, the notice on 29.06.1988 was issued to him.

(h) Because of his unsatisfactory performance, he was terminated from employment on 31.08.1989.

(i) Similar grounds are taken in the petition in paragraph 3.

6 It is not in dispute that the Respondent had worked for about five years with artificial breaks. It is also not in dispute that he had invoked the jurisdiction of the Industrial Court under Item Nos.5, 6 and 9 of Schedule IV of the MRTU & PULP Act, 1971. It is also not in dispute that he filed his complaint after his termination.

7 Sections 5, 6 and 7 of the MRTU & PULP Act, 1971 read as under:-

- “5. *Duties of Industrial Court:-*
 It shall be the duty of the Industrial Court –
- (a) *to decide an application by a union for grant of recognition to it;*
 - (b) *to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;*
 - (c) *to decided an application from another union or an employer for withdrawal or cancellation of the recognition of a union;*
 - (d) *to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV;*
 - (e) *to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;*
 - (f) *to decide references made to it on any point of law either by any civil or criminal court; and*
 - (g) *to decide appeals under section 42.*

6. *Labour Court:-*
 The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons

having the prescribed qualifications to preside over such Courts :

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7. *Duties of Labour Court:-*

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.”

8 In the light of the prayer clause (B) of the complaint reproduced above and in view of Section 5(d) and Section 7 of the MRTU & PULP Act, 1971 the complaint preferred by the Respondent was untenable before the Industrial Court. However, I cannot lose sight of the fact that at no point in time either before the Industrial Court or even in this petition, the Petitioner/ Employer has taken a stand that the complaint filed by the Respondent/ Employee was untenable before the Industrial Court.

9 In the absence of any such challenge or pleading notwithstanding the fact that the complaint at its very institution was untenable in law, it would be too harsh to deal with the said issue after 26 years of unemployment of the Respondent who is now about 68 years old. Had the said objection been taken at the right time before the Industrial

Court, when the Petitioner/ Employer filed it's Written Statement as early as on 20.11.1990, the Respondent could have been granted an option to raise his grievance under Item No.1 of Schedule IV before the Labour Court.

10 The Respondent/ Employee is equipped with the impugned judgment dated 03.09.1996 by which the Industrial Court has issued the following directions to the Petitioner/ Employer:-

“The Complaint is partly allowed.

It is hereby declared that the respondent No.1 and 2 have engaged and committed the unfair labour practices under item 6 and 9 of sch.IV of the Act by illegal retrenchment of the service of the complainant without following due process of law required under section 25F and 25G of the Industrial Disputes Act, 1947.

It is hereby ordered that the respondents shall desist and cease from continuing the unfair labour practice by reinstating the complainant in the service with continuity 16.08.1990 and 50% (fifty percent) back-wages.

The respondent shall comply with the order within one month from today.

The complaint under item 5 and 6 of sch.IV of the MRTU & PULP Act, 1971 stands dismissed.”

11 With an intention to do complete justice, I am considering this petition only from the point of view of quantifying the compensation in the light of the fact that the Respondent was working over a period of five years with artificial breaks introduced by the Employer and is out of

employment for the past 26 years owing to the ad-interim relief granted by this Court in terms of prayer clause (C) of the petition which reads as under:-

“(C) Pending the hearing and final disposal of this Writ Petition, the judgment and order passed by the learned Member, Industrial Court at Jalna dtd.03.09.1996 in Complaint (ULP) No.457/1994 (old Complaint (ULP) No.435/1990) which is at Exhibit D may kindly be stayed.”

12 The Apex Court in similar set of facts has quantified compensation in (a) Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, **[2013 LLR 1009]**; (b) Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, **[(2013) 5 SCC 136]**; (c) BSNL Vs. Man Singh, **[(2012) 1 SCC 558]**; and (d) Jagbir Singh Vs. Haryana State Agriculture Marketing Board, **[(2009) 15 SCC 327]**. By placing reliance on the said four judgments of the Apex Court, this Court has also taken a similar view in the *State of Maharashtra v/s Santosh Gorakh Patil* reported in **2015(3) Mh.L.J. 922**.

13 In the light of the law laid down by the Apex Court in the above referred judgments, it needs to be considered that the last drawn wages of the Respondent were at the rate of Rs.300/- per month. He has

put in about five years in employment and has suffered unemployment for 26 years. Considering these aspects, I am inclined to quantify the compensation of Rs.75,000/- to be paid by the Petitioners to Respondent No.1/ Employee.

14 In the light of the above, the impugned judgment dated 03.09.1996 by which Respondent No.1/ Employee was granted reinstatement in service with continuity and 50% back-wages and declaration of Unfair Labour Practice against the Petitioners, shall stand modified and replaced by the direction that the Petitioners shall pay the compensation of Rs.75,000/- (Rupees Seventy Five Thousand) to Respondent No.1/ Employee within a period of FOUR MONTHS from today. Failure to do so, shall invite interest at the rate of 6% per annum till the actual payment of the said compensation.

15 The Writ Petition is, therefore, partly allowed in the above terms. Rule is, accordingly, made partly absolute.

16 The record and proceedings in Complaint (ULP) No.457/1994 be returned to the Industrial Court, Jalna forthwith.

(RAVINDRA V. GHUGE, J.)