

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2350 OF 1997
WITH
CIVIL APPLICATION NO.9046 OF 2013

STATE OF MAHARASHTRA
AND OTHERS

PETITIONERS

VERSUS

ASHOK TUKARAM THORAT

RESPONDENT

Mr.S.G.Sangle, AGP and Mr.P.R.Tandale, Advocate for the petitioners.
Mr.V.B.Wagh, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/09/2015

PER COURT :

1. Mr.Wagh. learned Advocate has placed on record copy of the order passed by the learned Division Bench of this Court dated 08/10/2014 in WP No.7938/2013. Same is marked as Exhibit "X" for identification

2. Mr.Wagh submits that the respondent employee has been reinstated and is in employment from 1991, as continuity was granted by the Labour Court. He has waived the back wages from 1991 till 03/09/1999 by making a statement, which is recorded in the order Exhibit "X". He further submits that pursuant to the

directions of the learned Division Bench in order Exhibit "X", the petitioners have submitted the proposal with regard to the benefits accorded to the respondent subject to the decision in this writ petition.

3. Mr.Sangle, learned AGP with Mr.Tandale for the petitioners submit that in the light of the employee having waived back wages till his reinstatement that is from 1991 to 03/09/1999, the proposal with regard to the respondent/employee would be decided by the Appropriate Authorities and the said decision will be communicated to the concerned employee/respondent in the writ petition. The said employee, thereafter, shall be governed by the decision taken by the appropriate Government on the proposal.

4. Mr.Wagh, learned Advocate submits on instructions that the respondent/employee is agreeable and more so for the reason that he had already been reinstated with continuity and he has voluntarily waived the back wages from his date of termination 01/08/1991 till his reinstatement on 03/09/1999.

5. Notwithstanding the above, Mr.Sangle and Mr.Tandale have strenuously criticized the impugned judgment and order in

Complaint (ULP) No.134/1991 delivered by the Labour Court dated 25/09/1996.

6,. It is submitted that the concerned employee had not completed 240 days in continuous employment. His oral removal from employment would not amount to retrenchment, much less illegal retrenchment.

7. Mr.Wagh has supported the impugned judgment.

8. With the assistance of the learned Advocates, I have gone through the impugned judgment of the Labour Court.

9. The concerned employee had brought evidence before the Court of having continuously worked with the petitioners. So also, the petitioners have taken a stand that the employee had abandoned service. It was admitted that Section 25-F was not complied with since the employee had abandoned employment.

10. The Apex Court in the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre, AIR 1999 SC 983 and in the case of Novartis India Ltd., Vs. State of West Bengal and others, AIR

2008 SC 836 has held that the charge of abandonment of service needs to be proved as the same amounts to charging an employee with unauthorized absenteeism. Without an enquiry, the contention of abandonment cannot be sustained.

11. The petitioners have directly approached this Court against the judgment of the Labour Court delivered u/s 28(1) of the MRTU and PULP Act, 1971. The statutory and efficacious remedy u/s 44 has not been exhausted.

12. Notwithstanding the above and considering that the impugned judgment of the Labour Court is neither perverse nor erroneous, ends of justice would be met by disposing off this writ petition with the direction that the decision of the appropriate Government on the proposal of the respondent, as forwarded under orders of the Division Bench Exhibit "X", would take care of the service conditions and benefits of the respondent/employee.

13. Considering the fact situation as above and considering the directions of the learned Division Bench dated 08/10/2014, this petition is disposed off. Needless to state, the petitioners shall ensure that the proposal of the respondent/employee is decided

within a period of 12 (twelve) weeks and the decision shall, accordingly, be communicated to the respondent/employee forthwith.

14. Rule is, therefore, discharged.

15. Pending civil application, do not survive, hence disposed of.

(RAVINDRA V. GHUGE, J.)