

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3999 OF 1994

The Chief Executive Officer,
Zilla Parishad, Latur,
(Through) The District Health Officer,
Zilla Parishad, Latur

PETITIONER

VERSUS

Sindhu Ramrao Parse,
Age-24 years, Occu-Nil,
R/o Kasthi, Taluka Omerga,
Dist.Osmanabad

RESPONDENT

Mr.V.D.Hon, Senior Advocate a/w Mr.Ajinkya Deshmukh h/f
Mr.A.V.Hon, Advocate for the petitioner.
Mr.S.R.Choukidar h/f Mr.S.D.Dhongade, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 06/08/2015

ORAL JUDGMENT :

1. This petition was Admitted by order dated 17/11/1994. Interim relief to the extent of staying the payment of back wages was granted. The respondent has been reinstated in employment on 21/11/1994.

2. Mr.V.D.Hon, learned Senior Advocate has strenuously criticized the impugned judgment dated 21/03/1989 by which the Labour Court allowed Complaint (ULP) No.46/1988. He further criticizes the judgment of the Industrial Court dated 19/10/1994 by which

Revision (ULP) No.15/1989 filed by the petitioner herein was dismissed.

3. Mr.Hon submits that the respondent was appointed as ANM in the Health Department of the opponent on 05/12/1985. She has thereafter continued in employment till her termination on 18/12/1987. The Complaint was allowed on 21/03/1989 by the Labour Court. Relief of reinstatement has been granted only on account of non-compliance of Sections 25-F and 25-G of the I.D.Act. The Labour Court should have considered that the respondent had put in a short duration and had no right in law to be reinstated and to be continued in service. The back wages have been granted as if it was a consequential relief. He, therefore, submits that the impugned judgment of the Labour Court deserves to be quashed and set aside.

4. He further submits that the Revisional Court should have noticed the error committed by the Labour Court and should have upheld the termination on the ground that the contract with the respondent was not renewed and hence Section 2(oo)(bb) of the I.D.Act became squarely applicable to this case. He, therefore, prays for setting aside of the judgment delivered by the Labour and

Industrial Court. He further prays that this petition be allowed and permission to terminate the services of the respondent be granted.

5. Mr.Choukidar, learned Advocate for the sole respondent has strenuously supported the impugned judgments. He submits that the respondent was not appointed on contractual basis. She was continuously working with the petitioner and had established her employment through the documents produced before the Labour Court. By the oral testimony of the respondent witness no.2, it was proved that there was no documentary evidence on record to establish lapses on the part of the respondent. It was also proved that she was continued in employment till her termination.

6. He submits that the respondent was surviving on the employment which she had acquired. Non-compliance of Section 25-F was established and as such the action of the petitioner was rendered unsustainable. The petitioner could not prove any such circumstances which would fall within the exception to retrenchment carved out in Section 2(oo)(bb) of the I.D.Act, 1947. He, therefore, submits that merely because another view is possible, would not mean that the view taken by the Labour Court and the Industrial Court is necessarily a perverse view.

7. I have considered the submissions of the learned Advocates as recorded above and have gone through the record with their assistance. The factum of employment and continuity was proved by the respondent. Witness No.2 deposed on behalf of the petitioner indicating that the petitioner has no record to substantiate the claim that there were lapses in the day to day duties of the respondent. It, therefore, indicates that the petitioner had terminated the respondent on the basis of certain lapses. This could be termed as a stigmatic removal, which is unsustainable unless the charge is proved.

8. I cannot be unmindful to the subsequent events that have occurred in these proceedings. The respondent has been reinstated on 21/11/1994. She is still in employment. This Court had directed the petitioner by its order dated 03/07/1998 passed in CA No.1143/1996 to deposit Rs.50,000/- towards back wages.

9. Review petition No.5454/1998 preferred by the petitioner was disposed of by order dated 06/09/2007 maintaining the direction to deposit Rs.50,000/-.

10. The respondent had shown her willingness to waive 50% of the

back wages, if the matter is amicably settled. This statement was recorded by this Court on 09/08/2010.

11. The Apex Court, in its judgment delivered in the case of Ajaypal Singh Vs. Haryana Warehousing Corporation, 2015(145) FLR 425 has concluded that non compliance of Section 25-F of the I.D.Act cannot be cured subsequently and the relief in consequence to such violation is of reinstatement and continuity in service. The observations in paragraph nos.21, 24 and 26 are material, which read as under :-

“21. Section 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under said provision if the employer retrenches workman. Such a workman cannot be retrenched until he/she is given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice apart from compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification

in the Official Gazette.

24. *It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.*

26. *In the present case, the services of Appellant was not terminated on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. No such reasons was shown in the order of retrenchment nor was such plea raised while reference was made by appropriate Government for adjudication of the dispute between the employee and the employer. In absence of such ground, we are of the opinion that it was not open for the High Court to deny the benefit for which the Appellant was entitled on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. For the reasons aforesaid, we set aside the judgment and order dated 16th February, 2010 passed by the High Court of Punjab and Haryana, Chandigarh in L.P.A. No. 1117 of 2009 (O & M); judgment and order dated 26th March, 2009 passed by the learned Single Judge of the High Court of Punjab and Haryana, Chandigarh and upheld the Award dated 11th August, 1993 passed by the learned Presiding Officer, Labour Court, Rohtak in Reference No. 480/89. The Respondent*

is directed to implement the Award passed by the learned Presiding Officer, Labour Court, Rohtak in Reference No. 480/89 within three months, if not yet implemented. The appeal is allowed with aforesaid observations and directions.”

12. It is trite law that back wages are not to be granted mechanically. In the instant case, I do not find from the impugned judgment of the Labour Court that the respondent had canvassed her demand for back wages. Nevertheless, she had stated that the service with the petitioner was the only source of her income. So also, the respondent has waived 50% of the back wages.

13. The Apex Court in the matter of Syed Yakoob Vs. K.S.Radhakrishnan and others [AIR 1964 SC 447] has held that interference by this Court in its writ or supervisory jurisdiction is to a limited extent and unless the impugned order amounts to causing gross injustice to a party, the same ought not to be interfered with.

14. As such, I am of the view that the impugned judgment of the Labour Court as well as by the Industrial Court cannot be termed as being perverse or erroneous. In the light of the ratio laid down by the Apex Court in the Ajaypal Singh (supra), the impugned

judgments do not amount to causing any injustice to the petitioners.

15. In so far as the issue of full back wages are concerned, since the petitioner has consented to the waiver of 50% back wages, I am recording the said statement and the impugned judgments therefore stand modified with the direction to the petitioner to pay 50% of the back wages. The amount of Rs.50,000/- deposited in this Court, as noted above, shall be withdrawn by the respondent with accrued interest.

16. Needless to state, with the decision being rendered in this petition, the petitioner shall proceed to make available all service benefits and pay fixation, as have been granted to similarly situated comparable employees, expeditiously. Since it is stated that the back wages are approximately Rs.1,45,000/-, the petitioner shall pay an amount of Rs.25,000/- to the respondent in addition to the deposited amount within a period of 12 weeks from today.

17. In the light of this direction, this petition is partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)