

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3393/1994
WITH CIVIL APPLICATION NO.8018/2004
IN WRIT PETITION NO.3393/1994

Ramesh Uttam Pawar,
Age 36 years, Occ. Nil,
R/o Chandsar, Tq. Erandol,
District Jalgaon.

..Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Jalgaon
2. The Executive Engineer,
Irrigation and Water Supply
Department No.2, Zilla Parishad,
Jalgaon.

..Respondents

WITH
WRIT PETITION NO.3590/1994

Sahebrao Tanaji Patil,
Age major, Occ. at present Nil,
R/o Untawad, Post Dongaon,
Tq. Yawal, Dist. Jalgaon.

..Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Jalgaon
2. The Executive Engineer,
Irrigation and Water Supply
Department No.2, Zilla Parishad,
Jalgaon.
3. The Member,
Industrial Court,
Nasik.

4. The State of Maharashtra

..Respondents

AND
WRIT PETITION NO.3591/1994

Namdeo Gajmal Pawar,
Age major, Occ. at present Nil,
R/o Mahiji, Tq. Pachora,
Dist. Jalgaon.

..Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Jalgaon

2. The Executive Engineer,
Irrigation and Water Supply
Department No.2, Zilla Parishad,
Jalgaon.

3. The Member,
Industrial Court,
Nasik.

4. The State of Maharashtra

..Respondents

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Advocate for Petitioner : Shri P.R.Patil, Shri S.A.Dhengle
and Shri B.A.Dhengale

Advocates for Respondents 1 & 2 : Shri V.Y.Patil
AGP for Respondent State : Smt. Shinde V.A.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 27, 2015

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ORAL JUDGMENT :-

1. These matters were admitted by this Court on 18.10.1994, 18.10.1994 and 11.10.1994 respectively.

2. By order dated 21.7.1995, in the first two petitions, and

9.12.1994 in the third petition, this Court granted interim relief to these petitioners which reads as under:-

“ *Heard.*

The petitioners in both these petitions have been in service since 1980-81. The Labour Court granted the relief of reinstatement with 50 per cent backwages, but that has been denied in revision by the Industrial Court, against which these petitions have been filed.

The respondents to provide work to the petitioners on same terms and conditions as incorporated in the letter dated 9.8.1994 with prior notice to the petitioners. As an option or in default to provide work under Employment Guarantee Scheme or any other scheme for time being in force, the respondents shall deposit 50 per cent of the backwages within two months from today. The work be given to the petitioners within one month from today. This is without prejudice to the rights and contentions of the parties.”

3. Shri V.Y. Patil, learned Advocate for the respondents in all these matters submits that an amount of Rs.1,40,142/- was deposited by the respondent in the Labour Court vide D.D. No. 307782, dated 15.9.1995. This deposit was with reference to the petitioners in Writ Petition Nos. 3590 of 1994 namely, Sahebrao Tanaji Patil and Writ Petition No. 3591 of 1994, namely, Namdeo Gajmal Pawar. He further submits that the respondent deposited an amount of Rs.59,354/- before the Labour Court

on 18.2.1995 in Writ Petition No.3393 of 1994 in favour of the petitioner, namely, Ramesh Uttam Pawar.

4. Since these three petitioners are identically placed and involve the same respondent Zilla Parishad, Jalgaon, I have taken up these three petitions together for disposal.

5. The contentions of the petitioners are that, their Complaints (ULP) Nos. 43 of 1988, 42 of 1988 and 44 of 1988 respectively were decided by judgment and order, dated 4.12.1993 by the Labour Court, Jalgaon. The termination of the petitioners, dated 11.12.1986, despite having worked from 1980-1981 onwards was quashed and set aside. These petitioners were granted reinstatement, continuity and 50% backwages from 10.5.1988.

6. S/Shri P.R.Patil, B.A.Dhengale and S.A.Dhengale, learned Advocates for the petitioners further submit that the respondent filed Revision (ULP) Nos. 69 to 72 of 1994 before the Industrial Court at Nasik. By judgment and order dated 16.8.1994, all the Revision Petitions were allowed and the judgment of the Labour Court, dated 4.12.1993 was quashed and set aside.

7. They have taken me through the record available and the judgment of the Labour Court as well as the impugned judgment of the

Industrial Court. They submit that a finding on facts, based on oral and documentary evidence, recorded before the Labour Court was overturned by the Industrial Court, despite the fact that its jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”), was a revisional jurisdiction and not in the form of an appeal jurisdiction. They, therefore, submit that even if the findings arrived at by the Labour Court may appear to be suffering from some error, the said judgment could not have been interfered with by the Industrial Court within its revisional jurisdiction.

8. They have painstakingly taken me through the conclusions of the Industrial Court to indicate that merely because another view was possible, the Industrial Court could not have interfered with the conclusions drawn by the Labour Court. They add that the Industrial Court did not hold that the impugned judgment of the Labour Court was perverse and/or erroneous. They, therefore, pray for quashing and setting aside of the impugned judgment, dated 16.8.1994 and further pray for restoring the judgment of the Labour Court, dated 4.12.1993.

9. Shri V.Y.Patil, learned Advocate on behalf of the respondent / Department has strenuously supported the impugned judgment. Submission is that the moment the Industrial Court came to a conclusion that the Labour Court had erroneously granted reinstatement in

employment, the Industrial Court was obliged to quash and set aside the said judgment. Though the revisional jurisdiction is narrow, it would not preclude the Industrial Court from setting aside the judgment of the Labour Court, once it is noticed to be unsustainable.

10. He further submits that though the Industrial Court may not have come to a conclusion that the judgment of the Labour Court is perverse, it will have to be presumed to be so, since the Industrial Court has adduced sufficient reasons in support of its conclusions. He, therefore, submits that no interference is called for, these petitions be dismissed and the respondents be permitted to withdraw the amounts deposited in the Labour Court.

11. I have considered the rival submissions of the learned Advocate, who have taken me through the record. It is trite law that merely because a second view is possible, the Industrial Court would not be justified in setting aside the judgment of the Labour Court. Oral and documentary evidence was adduced before the Labour Court and it had arrived at a finding on facts.

12. This Court, while dealing with the scope of interference of the Industrial Court in its revisional jurisdiction has recently dealt with a matter in the case of Agricultural Produce Market Committee Arjuni Moregaon and another Vs. Ashok Danaji Hatzode [2015 (4) Mh.L.J. 79],

holding that even if the Industrial Court finds that there is a slight error in the conclusions of the Court below, it cannot be permitted to consider the evidence threadbare and set aside the findings on facts. It is only when the Industrial Court concludes that the conclusions of the Court below are perverse and which could not have been arrived at by any prudent person, that the said findings / judgment could be set aside for being perverse. I do not find such conclusion in the impugned judgment of the Industrial Court.

13. Notwithstanding the above, the subsequent events and the present situation cannot be overlooked. All these petitioners are out of employment from 1988 onwards for the past about 27 years. Under orders of this Court, the respondents have deposited an amount of Rs.1,99,496/- in 1995. Since the respondents could not allocate work to these petitioners, they have chosen to follow the second option available to them under the interim order passed by this Court, which is reproduced herein above. So also, these three petitioners who claimed to have joined in 1980-81, are about 58 years to 60 years of age. Age of superannuation with the respondent is 58 years.

14. In the matter of quantification of compensation, in lieu of reinstatement and in the backdrop of the employees being out of employment for 20-25 years, the Apex Court has held that compensation would be more reasonable and practicable, in the following four cases:-

1. *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal* [2013 LLR 1009],
2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh* [(2013) 5 SCC 136],
3. *BSNL Vs. man Singh* [(2012) 1 SCC 558] and
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327].

15. In the light of the above, I am of the view that it would be practical and reasonable to permit the petitioners to withdraw the amount deposited by the respondent before the Labour Court with accrued interest till today, as compensation, in lieu of reinstatement, with continuity and backwages as was awarded by the Labour Court. I find it fruitless to direct reinstatement, considering the age of the petitioners and the fact that they are out of employment for about 27 years.

16. In the light of the above, these petitions are partly allowed. The judgment of the Labour Court and the Industrial Court shall stand modified with the direction that the petitioners in the first two petitions, namely, Sahebrao Tanaji Patil and Namdeo Gajmal Pawar shall withdraw the amount (Rs.1,40,142/-) deposited by the respondents before the Labour Court with accrued interest till today, in equal shares.

17. The third petitioner Ramesh Uttam Pawar, in whose case, the respondent has deposited Rs.59,345/- before the Labour Court, shall withdraw the said amount with accrued interest till today.

18. These three petitioners shall submit tangible identity proof in the form of Voter's ID Card and residence proof before the Labour Court, Jalgaon while withdrawing the said amounts, without any conditions.

19. Rule is made partly absolute in the aforesaid terms in all these petitions.

20. Pending Civil Applications, if any, stand disposed off.

(RAVINDRA V. GHUGE, J.)

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