

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5712 OF 2015

Ram S/o Daryappa More,
Aged-56 years, Occu-Service,
R/o Hipparga (Rava),
Tq.Lohara, Dist.Osmanabad

PETITIONER

VERSUS

1. The Superintending Engineer,
Maharashtra State Electricity Distribution
Company Limited, Circle Office,
Osmanabad,
2. The Assistant Engineer,
Maharashtra State Electricity Distribution
Company Limited,
Sub-Division, Lohara,
Dist.Osmanabad,
3. The Junior Engineer,
Maharashtra State Electricity Distribution
Company Limited,
Branch Jewali,
Dist.Osmanabad.

RESPONDENTS

WITH
WRIT PETITION NO.8561 OF 2015

1. Superintending Engineer,
Circle Office,
Maharashtra State Electricity
Distribution Company Ltd.,
Osmanabad,
2. Assistant Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Sub Division Lohara,
Tq.Lohara, Dist-Osmanabad,

3. Junior Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Jewali Unit, Tal.Lohara,
Dist.Osmanabad

PETITIONERS

Ram S/o Darayappa More,
Age-55 years, Occu-Service,
R/o Hipparaga (Rava),
Tal.Lohara, Dist.Osmanabad

RESPONDENT

Mr.S.S.Choudhary, Advocate for the petitioners.
Mr.P.B.Paithankar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/12/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner in the first petition has challenged the judgment of the Labour Court dated 17/01/2013, to the extent of denial of back wages. His Complaint (ULP) No.3/2009 was allowed, his dismissal was set aside and he was granted reinstatement with continuity and 50% back wages. He prays for 100% back wages. He further challenges the judgment of the Industrial Court dated 09/04/2014, by which his Revision (ULP) No.41/2013 was rejected and Revision

(ULP) No.25/2013 filed by the respondent/Management has been allowed and the order of 50% back wages is set aside.

3. The respondents in the first petition are the petitioners in the second petition, which was filed for challenging the same judgments of the Labour Court and the Industrial Court.

4. Since the employer and the employee are litigants in these matters and both have challenged the same judgments, I have taken up both these petitions together for hearing and decision. For the sake of brevity, the litigating sides would be referred to as the “employer” and the “employee”.

5. Mr.Choudhary, learned Advocate for the employee submits that he was removed from employment on account of unauthorized absenteeism. A charge sheet was issued to him. After considering his reply, an enquiry was conducted. On the basis of the Enquiry Report, he was issued with a second show cause notice proposing the punishment of removal from service from 27/01/2009.

6. The employee preferred Complaint (ULP) No.3/2009 before the Labour Court, Latur. By Part-I order dated 04/05/2012, the enquiry

was set aside and the findings of the Enquiry Officer were declared perverse. The employer was given the liberty to conduct a *denovo* enquiry before the Court. Mr.Choudhary submits that no enquiry was conducted by the employer before the Labour Court and hence the complaint was rightly allowed. However, the Labour Court granted only 50% back wages instead of granting 100% back wages.

7. The employee, therefore, preferred Revision (ULP) No.41/2013 before the Industrial Court for claiming full back wages. The employer preferred Revision (ULP) No.25/2013 praying for setting aside the judgment of the Labour Court and for upholding the order of termination. The Industrial Court rejected the employee's revision and partly allowed the employer's revision.

8. Mr.Choudhary, therefore, submits that the Industrial Court could not have set aside the grant of 50% back wages. Once the termination is held to be illegal, he was entitled for full back wages as the employer cannot be permitted to take advantage of its own wrong. He, therefore, prays that his petition be allowed and 100% back wages be granted to him.

9. Mr.Paithankar, learned Advocate appearing on behalf of the

employer has strenuously criticized the impugned judgments. Contention is that the Labour Court erroneously held that the documents produced in the departmental enquiry cannot be read in evidence since the enquiry has been set aside. He submits that when an enquiry is held to be perverse and vitiated, the documents which form the basis of the charge sheet, cannot be discarded. It is only the oral evidence in the enquiry that has to be disregarded since a *denovo* enquiry is to be conducted. The charge sheet, reply of the employee and certain reports of the employer, which form the basis of the charges, have to be read in evidence.

10. Notwithstanding the above, Mr.Paithankar on perusing paragraph No.7 of the judgment of the Labour Court, frankly states that the employer did not adduce any evidence before the Labour Court to prove the misconducts alleged against the employee.

11. He, however, strenuously submits that there was no evidence before the Labour Court as regards not being in gainful employment and no efforts made to search for employment. The Labour Court, therefore, could not have granted back wages even to the extent of 50% to the employee. The Industrial Court has, therefore, rightly set aside the order to the extent of back wages.

12. He further submits that the employee was charged for having committed an offence under 302, 148 and 149 of the IPC r/w Section 135 of the Bombay Police Act. Without informing the employer, he remained unauthorizedly absent. Though he has been acquitted of the offences charged, the employer cannot be precluded from taking disciplinary action on the basis of a charge sheet in relation to unauthorized absenteeism. He, therefore, prays that the petition filed by the Management be allowed and the order of termination be upheld.

13. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

14. In the light of the judgment of the Apex Court in the matter of Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, reported at 1972(1) SCC 595 and Bharat Forge Company Ltd., Vs.A.B.Zodge and another, AIR 1996 SC 1556, once an enquiry is set aside for being vitiated or for the reason of the findings of the Enquiry Officer being perverse, the case is relegated to the position of a case without an enquiry. The employer then has to conduct a *denovo* enquiry for proving the charges before the Court.

15. In the instant case, the enquiry conducted by the employer was set aside and was given an opportunity to conduct a *denovo* enquiry. Record reveals that the employer did not conduct a *denovo* enquiry before the Labour Court. The charges levelled against the employee, therefore, failed and the Labour Court then had to conclude that no charges are proved against the employee. On this count, the conclusion of the Labour Court of granting reinstatement in service with continuity cannot be termed as being perverse or erroneous.

16. The only issue, therefore, that needs consideration in these petitions is whether back wages to any extent could have been granted by the Labour Court and whether the Industrial Court has rightly deprived the employee of all back wages.

17. It is trite law that the employee has to claim back wages by leading evidence to suggest that he was not gainfully employed, he attempted to seek alternate employment and despite efforts could not secure employment. In the instant case, there is no such evidence on record. It is in this backdrop that the Industrial Court concluded that as there was no evidence of being unemployed, not being in

gainful employment, back wages need not be paid to the employee.

18. Notwithstanding the above, the Apex Court in a recent judgment delivered in the case of Gauri Shanker Vs. State of Rajasthan, 2015(II) CLR 497 has concluded that considering the hardships and the difficulties suffered by an employee on account of his termination and consequent unemployment, 25% back wages could be granted. The said conclusion has been arrived at in paragraph No.16 of the said judgment.

19. So also, the Apex Court in the case of Nicholas Piramal India Ltd., Vs. Harisingh, 2015(II) CLR 468 has concluded that it would be just to grant 50% back wages to an employee so as to reduce the hardships suffered by him owing to his termination and consequent unemployment.

20. Considering the above ratio laid down in Gauri Shanker case (supra) and Nicholas Piramal (supra), I am inclined to grant 40% back wages to the employee.

21. In the light of the above, the petition filed by the employer stands dismissed. Rule is discharged.

22. To the extent of the petition filed by the employee, the same is partly allowed and the judgment of the Industrial Court dated 09/04/2014 is modified and the employee is granted 40% back wages from the date of his termination dtd.27/01/2009 till the judgment of the Industrial Court dated 09/04/2014 on the basis of his last drawn wages at the time of his termination.

23. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)