

kps

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

WRIT PETITION NO. 6464 OF 2014

- 1 Rajan Vishnu Chauk,
Age : Major, Occ : Nil,
R/o House No.1355, Galli No.5,
Nagar Patti, Dhule.
- 2 Sudakar Mangesh Patil,
Age : Major, Occ : Nil,
R/o Plot No.3, Shrikrishna Nagar,
Deopur, Dhule.
- 3 Hitesh Shrikrishnadas Shah,
Age : Major, Occ : Nil,
R/o Plot No.341, Desaipura,
Nandurbar.
- 4 Devasingh Ramsingh Girase,
Age : Major, Occ : Nil,
R/o Osarlai, Post Kuparli,
Tal. & Dist.Nandurbar.
- 5 Chabulal Ramdas Patil,
Age : Major, Occ : Nil,
R/o Plot No.7, Kedar Nagar,
Deopur, Dhule.
- 6 Suresh Deoram Marathe,
Age : Major, Occ : Nil,
R/o 43, Akash Mogra Nagar,
Nalwa Road, Nandurbar.
- 7 Keshav Murlidhar Patil,
Age : Major, Occ : Nil,
R/o Tajpuri, Tal.Shirpur,
Dist.Dhule.
- 8 Ravindra Shivilal Nikam,
Age : Major, Occ : Nil,

R/o Chinchgavan, Tal.Chalisgaon,
District Jalgaon.

...PETITIONERS

-VERSUS-

The President,
Liquidator Board,
Shri P.K.Anna Patil Janta Sahakari Bank Ltd.,
having office at Taloda Road,
Nandurbar, Dist.Nandurbar.

...RESPONDENT

**WITH
WRIT PETITION NO.6890 OF 2014**

Shri P.K.Anna Patil Janata Sahakari
Bank Limited,
Main road, Near Railway Flyover,
Nandurbar.
Through it's Manager,
Shri Kashinath Wanji Patil,
Age : 53 years, Occ : Service,
R/o Deopur, Dhule,
District Dhule.

...PETITIONER

-VERSUS-

- 1 Rajan Vishnu Chowk,
Age : 53 years, Occ : Service,
R/o House No.1355, 1/A,
Galli No.5, Nagar Patil Corner,
Dhule, District Dhule.
- 2 Sudhakar Mangesh Patil,
Age : 58 years, Occ : Service,
R/o Shrikrishnanagar,
Plot No.3, Deopur,
Dhule, District Dhule.
- 3 Rajendra Vitthal Marathe,
Age : 52 years, Occ : Service,

R/o 2, Jitendranagar, Deopur,
Dhule, District Dhule.

- 4 Vitthal Motiram Marathe,
Age : 47 years, Occ : Service,
R/o Rajale, Taluka Nandurbar,
District Nandurbar.
- 5 Hitesh Shrikrishnadas Shah,
Age : 53 years, Occ : Service,
R/o 341, Dhansukhshah Pathak,
Desaipura, Nandurbard,
District Nandurbar.
- 6 Devisingh Ramsingh Girase,
Age : 57 years, Occ : Service,
R/o Osarli, Post Kuparli,
Tq.Nandurbar, District Nandurbar.
- 7 Chabulal Ramdas Patil,
Age : 53 years, Occ : Service,
R/o Kedar Nagar, Plot No.7,
Deopur, District Dhule.
- 8 Sachin Deosingh Jadhav,
Age : 39 years, Occ : Service,
R/o 6/D, Tulshiramnagar,
Near Jagannath Nagar,
Deopur, District Dhule.
- 9 Suresh Deoram Marathe,
Age : 55 years, Occ : Service,
R/o 43, Akash Mogara Nagar,
Nalwa Road, Nandurbar,
District Nandurbar.
- 10 Keshav Murlidhar Patil,
Age : 53 years, Occ : Service,
R/o at Tajpuri, Taluka Shripur,
District Dhule.
- 11 Vasant Ghaman Patil,
Age : 53 years, Occ : Service,

R/o 94, Sudarshan Colony,
Deopur, District Dhule.

- 12 Ravindra Shivilal Nikam,
Age : 57 years, Occ : Service,
R/o at Chinchgavan,
Taluka Chalisgaon, District Jalgaon.

...RESPONDENTS

...
Advocate for Workers : Shri Patil Shrikant S.

Advocate for the Management Bank : Shri Hon Vinayak D., Senior
Advocate a/w Mr.A.V.Hon.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st October, 2015

Oral Judgment:

- 1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

- 2 Both these petitions arise out of similar judgments and orders
of the Labour Court dated 06.08.2012, 07.08.2012, 08.08.2012,
09.08.2012 and 10.08.2012 delivered in Complaint (ULP) Nos.33 to 42,
45 and 46/2011 and the common judgment dated 04.01.2014 delivered
by the Industrial Court in Revision (ULP) Nos.23 to 34/2012.

- 3 The litigating sides in both these petitions are the workers

and the Bank. For the sake brevity, they shall be referred to as “the Workers” and “the Management or the Bank”.

4 It is the case of the Workers that there was a closure of the Bank on 14.05.2011. The Workers in these petitions have been retrenched under the orders of the Board of Liquidators. Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 have not been complied with. All the Workers were permanent employees of the Management/ Bank.

5 After the services of the Workers were discharged by the Board of Liquidators on 14.05.2011, the Workers had no option but to prefer the above referred Complaints before the Labour Court alleging illegal retrenchment and therefore, praying for reinstatement with continuity and full back-wages.

6 By the impugned judgments, as stated above, of the Labour Court, the complaints were partly allowed and the Workers were granted compensation of one month salary for breach of Section 25F in lieu of reinstatement with continuity and back-wages. In short, reinstatement, continuity and back-wages have been refused. It is stated that this order has been complied with by the Management/ Bank.

7 The Workers preferred Revision (ULP) Nos.23 to 34 of 2012 before the Industrial Court for challenging the judgments of the Labour Court. The Management did not challenge the said judgments of the Labour Court.

8 By the impugned judgment of the Industrial Court dated 04.01.2014, the Management was directed to pay two month's salary in addition to the one month's salary directed by the Labour Court with interest at the rate of 8% per annum from the date of the order of the Industrial Court.

9 The grievance of the Workers is that once the law of retrenchment and especially Sections 25F, 25G and 25H have been violated, the only relief that can be granted by the Courts is reinstatement with continuity of service and in appropriate cases, back-wages can also be granted.

10 Shri Patil, learned Advocate appearing for the Workers, places reliance upon the judgment of the Apex Court in the matter of *Sudarshan Rajpoot v/s Uttar Pradesh Road Transport Corporation*, (2015) (2) SCC 317 and *Mackinnon Mackenzie and Company Limited v/s Mackinnon*

Employees Union, **2015 (4) SCC 544**. He, therefore, submits that both the Courts below have erred in passing the impugned orders which are rendered unsustainable in the light of the Apex Court judgments.

11 Shri Hon, learned Senior Advocate appearing for the Management, has also assailed the judgment of the Industrial Court. He submits that the Management/ Bank has gone into liquidation from 06.01.2009. By the order of the Reserve Bank of India dated 22.12.2008, the Banking Licence of the Management/ Bank has been cancelled. Since then there has been no business activity and as a consequence of which, the Board of Liquidators retrenched the Workers on 14.05.2011 after keeping them in employment without work for almost two and half years.

12 Shri Hon draws the attention of this Court to the order of termination dated 10.05.2011 which is made effective from 14.05.2011. He submits that there is no other reason to discharge the services of the Workers, but on account of the order of the Reserve Bank of India cancelling its banking licence. The Authorities under the Maharashtra Cooperative Societies Act, 1960 have passed the orders appointing the Board of Liquidators upon the Management/ Bank so as to initiate steps for carrying out recoveries and for liquidating the Bank. He, therefore, submits that the factum of discharging the Workers cannot be called in

question. Each of the Workers were served with the order of discharge.

13 He further submits that the Management has, till this date, spent Rs.5,64,65,751/- for paying the outstanding wages from 2007-2011, provident fund accumulations and gratuity. On instructions from the Management officials present in the Court, he submits that the retrenchment compensation under Section 25F was not paid. One month salary in lieu of one month notice period under Section 25F(a) was paid pursuant to the impugned orders of the Labour Court.

14 He, therefore, submits that this is a non-adversarial litigation. The Management is not antipathetic towards the Workers. It is under unfortunate circumstances as narrated above that the banking licence of the Bank has been cancelled and it has been put out of business. He fairly states that this Court may pass appropriate orders as may be permissible in law.

15 I have considered the submissions of the learned Advocates.

16 It is undisputed that Section 25F(b) of the Industrial Disputes Act, 1947 has not been complied with. Considering the ratio laid down by the Apex Court in the case of Sudarshan Rajpoot and Mackinnon

Mackenzie Limited (supra), an order of reinstatement with continuity of services, was a foregone conclusion. In normal circumstances, I would have granted the said relief to the Workers. However, such relief would amount to foisting the Workers on the Management. There are only 12 workers before the Court, but there could be about 60 to 70 more workers who would claim a similar reliefs, who are presently not before this Court.

17 It also cannot be overlooked that the Bank is not in business on account of the cancellation of its banking licence. The Bank is in liquidation. In such situation, it would amount to worsening the financial condition of the Bank by directing reinstatement with continuity and back-wages to the Workers. It is in these peculiar facts of the case that I find it appropriate to modify the impugned judgment of the Industrial Court as well as the Labour Court and direct the Management to ensure that the retrenchment compensation as prescribed under Section 25F(b) is paid to the Workers.

18 Shri Hon has submitted that the Management Bank has to repay the dues towards the State Government, Creditors, Statutory Authorities and the deposit/ account Holders. Recovery is going on, on day to day basis. Whatever funds are recovered, are apportioned towards such payments. In the event, the Bank has enough funds, the payments to

these Workers would be made.

19 I cannot appreciate the above contentions of the Management. In a normal situation, if the retrenchment compensation as prescribed under Section 25F is not paid and the three conditions set out therein, which are axiomatic, are not complied with, on or before the date of retrenchment, it would amount to an unlawful retrenchment. As such, I am inclined to direct the Management to ensure that the payment of retrenchment compensation under Section 25F(b) is made on priority basis to the Workers.

20 In the result, both the petitions are partly allowed only to the extent of modifying the judgment of the Industrial Court dated 04.01.2014 by directing the Management to calculate the amount of retrenchment compensation to be paid to the Workers under Section 25F(b) by dividing their last drawn gross monthly salary by 26 multiplied by 15, as compensation for each year of service. Such compensation shall be paid for the number of years of service put in by the Workers. The service beyond the period of six months shall be rounded off to one year.

21 Since the Industrial Court has granted interest on the amount, the compensation amount as directed above to be paid, shall carry simple

interest at the rate of 3% per annum from the date of the judgment of the Industrial Court dated 04.01.2014 and these amounts shall be paid to the Workers within a period of six months from today.

22 It is made clear that the Management shall first pay these dues of the Workers from the funds generated, prior to making payments to the statutory authorities or creditors or account holders.

23 The amount of deficit court fees of Rs.2,750/- have not been paid by the Workers in relation to their petition. Shri Patil submits that the said amount would be deposited in this Court within a period of four weeks. Statement is recorded.

24 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)