

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8329 OF 2012

Ahmednagar Zilla Shramik Sanghatana,
Tahsil Office Road, Trade Union Centre,
Shrirampur, Dist.Ahmednagar,
Through its Secretary,
Balasaheb Annasaheb Surde,
Age-61 years, Occu-Social Worker,
R/o As above.

..PETITIONER

VERSUS

1. Rayat Shikshan Sanstha,
Karmaveer Bhaurao Patil Parisar
Satara, District Satara,
through its President,
2. Rao Bahadur Narayanrao Borawake
Maha-Vidyalaya, Shrirampur,
Tal.Shrirampur, Dist.Ahmednagar,
Through its Principal

..RESPONDENTS

...
Advocates appearing for -
Petitioner : Shri P.V.Barde
Respondents : Shri V.R.Dhorde
...

CORAM : RAVINDRA V. GHUGE, J.
Dated : July 6, 2015

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner - Union has challenged the impugned judgment and order dated 17.8.2012, delivered by the Industrial Court in Revision (ULP) Nos. 72 and 81 of 2007.

5. At the very outset, the petitioners have made a statement that they are agreeable to receive appropriate compensation on behalf of three employees, whose cause is being espoused by the petitioner Union. This statement was recorded on 23.6.2015 by this Court.

6. The issue, therefore, is restricted to quantifying the compensation to be paid by the respondent to the three employees concerned, in the event they are held entitled to such compensation.

7. The three employees, namely, Balasaheb Baburao Gaithane, Vasant Jagannath Kasar and Subhash Sakharam Kharat had joined the respondent on 15.8.1986, 11.7.1987 and 11.7.1987, respectively. They were orally terminated on 18.8.1988. They challenged their termination by filing Complaint (ULP) No.139 of 1988 before the Labour Court and the same was allowed by judgment and order dated 31.1.1992.

8. The Labour Court had issued the following directions in the said judgment:-

“The Complaint is partly allowed.

The respondents are directed to cease and desist from indulgence of unfair labour practice and its further continuance and to reinstate all these workers except Dadabhai Bashir Pathan with continuity of service and without back wages. The respondents are at liberty to retrench these workers, if work is not available with them by following due procedure of law.

This order shall be carried in to effect within two months from today.”

9. The respondents preferred Revision (ULP) Nos. 14 of 1992, 15 of 1992 and 17 of 1992, respectively, against the employees and similarly Revision (ULP) No. 34 of 1992 was filed by the respondent Union. All were dismissed by the judgment and order dated 2.4.1998.

10. As such, the three workers were reinstated on 14.9.1998 and were terminated within four days on 19.9.1998.

11. The petitioner Union filed Complaint (ULP) No. 88 of 1998 before the Industrial Court for challenging the termination of the said workers. By judgment and order dated 30.8.2012 the Complaint was allowed and the respondent was directed to reinstate the workers with continuity of service and 25% backwages.

12. The respondent preferred Revision (ULP) No. 72 of 2007 and the

petitioner preferred Revision (ULP) No. 81 of 2007 before the Industrial Court. By the impugned judgment and order dated 17.8.2012, both the Revision Petitions were partly allowed. The judgment of the Labour Court dated 30.8.2007 was quashed and set aside. In Clause (3) of the operative part of the impugned order, the Industrial Court appears to have issued two directions, which are as follows:-

(A) By way of compensation, an amount of Rs.6,347/-, Rs. 5,814/- and Rs. 5,814/- respectively be paid to the concerned workers.

(B) In lieu of reinstatement and continuity of service, salary for the intervening period be paid to them.

13. It is noteworthy that the respondent / management had accepted the impugned judgment and has not challenged it. Contention of the respondent is that the above direction of payment of amount is the total amount to be paid to the three workers and nothing more is required to be paid. Shri Barde, learned Advocate for the petitioner also submits that his interpretation of Clause (3) of the impugned order is somewhat similar to the interpretation of the respondent and hence the petitioner has preferred this petition on the ground that a paltry amount has been granted.

14. Shri Dhorde has submitted that these workers were daily wagers, were working on the seasonal activity, were performing work of

watering the trees, the trees have grown and become self sustaining and these workers, during the examination period used to perform the work of those students who used to perform the same work in the “*Earn and Learn Scheme*.” He, therefore, strenuously supports the impugned judgment and contends that the Industrial Court intended to grant compensation to these workers strictly as per the amounts mentioned in the order.

15. I have considered the submissions of the learned Advocates who have taken me through the petition paper book. The issue as to whether the three employees have completed 240 days in the continuous and uninterrupted service of the respondents, need not detain me. By the judgment of the Labour Court dated 31/01/1992 in Complaint (ULP) No.139/1988, the oral termination dated 18/08/1988, inflicted on these 3 workmen, has been set aside and they have been granted continuity in service. The said judgment has not been set aside by the Industrial Court or by any Superior Court. It, therefore, has to be deduced that the three workers are deemed to be in continuous employment from the date of their joining till their second termination dated 19/09/1998.

16. I have considered the submissions of Shri Barde, who has canvassed on behalf of three workmen that compensation be computed in the light of subsequent events. Same is vehemently opposed by Shri

Dhorde.

17. In Revision (ULP) No.72/2007, as observed above, the Industrial Court has granted meager amounts in the first part of Clause 3 and appears to have granted wages from the date of termination till the date of judgment of the Industrial Court. However, paragraph No.9 of the conclusions of the Industrial Court indicates otherwise. The Industrial Court appears to have proceeded on the premises that the employer has the legal right to cure the illegality occurred due to non-compliance of Section 25F while retrenching the workmen. If paragraph No.9 is read in tandem with clause 3 of the operative part of the order, it appears that clause No.3 is not in two parts, but is a single direction to pay a paltry amount to the workers in lieu of reinstatement, continuity and back wages.

18. I am unable to accept the conclusion of the Industrial Court set out in paragraph No.9 of the impugned judgment in the light of the conclusions of the Apex Court drawn in the case of Ajaypal Singh Vs. Haryana Warehousing Corporation, [(2015) 6 SCC 321], (Date of judgment 09/07/2014). Paragraph Nos. 9, 10, 11 and 22 of the said judgment read as under :-

“9. Chapter V-A of the Industrial Disputes Act, 1947 deals with 'lay-off and retrenchment'. Section 25B defines continuous service, including deemed continuous service on continuation of certain

days in a year. Section 25C of the Act explains the right of the workman for compensation. Section 25F deals with conditions precedent to retrenchment of a workman, which reads as follows :

"25F. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been 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:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

The aforesaid provisions make it mandatory that in order to retrench a workman who has been in continuous service for not less than one year in industry, the employer needs to give a month's notice or to pay the workman the amount in lieu of notice and the wages for the period of notice. That is to say any order of retrenchment in violation of Section 25F will render such order illegal.

10. Section 25G deals with the procedure for retrenchment and

the said Section reads as follows:

"Section 25G. Procedure for retrenchment.--Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

11. *For attracting the provisions of Section 25G of the Industrial Disputes Act, 1947, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason (Refer: Harjinder Singh v. Punjab State Warehousing Corporation).*

22. *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."*

19. The Industrial Court, after noticing the illegality in the retrenchment of these 3 persons, could not have been magnanimous in showing misplaced sympathy towards the employer by permitting the employer to cure the illegality and pay retrenchment compensation, which is a paltry amount. The impugned judgment, therefore, has caused miscarriage of justice.

20. In the peculiar backdrop of this case and in the light of the fact that (a) the said 3 workers had initially worked in between 12 to 20 months when the first termination occurred on 18/08/1988, (b) had worked for only 4 days after reinstatement on 14/09/1998 when the second termination occurred on 19/09/1998 and (c) keeping in view that they are out of employment for almost 18 years, I am inclined to quantify compensation in lieu of reinstatement and continuity of service.

21. The Apex Court, in the following cases, has considered similar facts and circumstances and quantified compensation :-

“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]. ”

22. In the light of the above, considering the fact that these 3 workers who had initially put in 12 to 20 months and were granted continuity in service, while being reinstated on 14/09/1998, can be legally said to have put in about 10 years of service though they did not work from 18/08/1988 till 13/09/1998 and from 19/09/1998 onwards. Therefore, compensation of Rs.2.5 lac deserves to be granted to Balasaheb Baurao Gaydhane and Rs.1.75 lac each to Vasant Jagannath Kasar and Subhash Sakharam Kharat.

23. This petition is, therefore, partly allowed. The respondents are directed to pay compensation of Rs.2.5 lac to Balasaheb Baburao Gaydhane and Rs.1.75 lac each to Vasant Jagannath Kasar and Subhash Sakharam Kharat, within a period of 12 (twelve) weeks from today.

24. Rule is accordingly made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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