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

WRIT PETITION NO. 4292 OF 2015

Aurangabad District Cooperative Milk
Producers Union Limited,
Jalna Road, Aurangabad.
Through it's Managing Director,
Pradip s/o Bhaurao Patil,
Age : 57 years, Occ : Service,
R/o Aurangabad District Cooperative
Milk Producers Union Limited,
Jalna Road, Aurangabad.

...PETITIONER

-VERSUS-

Suresh Maroti Tathe,
Age : 30 years, Occ : Service,
R/o Georai (Shemi), Taluka Sillod,
District Aurangabad.

...RESPONDENT

...

Advocate for Petitioner : Shri Nagargoje R.T.
Advocate for Respondents : Shri Palodkar Devdatt P.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 23rd October, 2015**

Oral Judgment:

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

2 The Petitioner is aggrieved by the impugned judgment dated
09.07.2014 delivered by the Industrial Court in Complaint (ULP)
No.40/2007 to the extent of grant of monetary benefits to the Respondent

for the period 22.06.2009 till 26.09.2011.

3 The Petitioner submits that the Respondent has been granted regularization with benefits incidental and consequential thereto from the date of filing of the complaint. The costs of Rs.2000/- have been imposed upon the Petitioner.

4 Shri Nagargoje submits that this matter was remanded earlier by this Court by the order dated 04.12.2013 passed in Writ Petition No.503/2013. There is no dispute that the Respondent was absent from 22.06.2009 till 26.09.2011 due to burn injuries which he has suffered on account of an electric shock. The other two workmen were granted permanency by the Industrial Court by its earlier judgment dated 16.09.2011 delivered in the same case. Since the Respondent was left out, the matter was remanded.

5 Shri Nagargoje further submits that there is no dispute as regards the tenure of employment of the Respondent. He is in employment even today. However, he was voluntarily absent from 22.06.2009 till 26.09.2011 and the Industrial Court while granting regularization, has given the monetary benefits for this period to the Respondent. He, therefore, prays for setting aside of the impugned

judgment to this extent.

6 Shri Palodkar, learned Advocate for the Respondent, submits that the Respondent was absent for the above said period of two years and three months as he had sustained burn injuries on account of an electric shock. Earlier he was refused regularization since this period was held to be a break in service. After remand, the parties have led evidence. The Respondent witness in his evidence at Exhibit O/8 did not utter a single word about the absence of the Respondent. He admitted that the appointment orders were issued to the Respondent and he is in employment.

7 Shri Palodkar further submits that the Respondent witness admitted that there are about 25 to 26 posts of helpers available with the Petitioner. The witness further admitted that the Rules framed by the State Government are not applicable to the employees of the Petitioner. He further admitted that the Respondent was working continuously from 2005 onwards except for the period of absence of two years and three months. Shri Palodkar, therefore, prays for the dismissal of the petition.

8 I have considered the submissions of the learned Advocates as have been recorded herein above.

9 The only point for determination in this petition is as to whether, the Respondent can claim monetary benefits for the period 22.06.2009 till 26.09.2011.

10 It is undisputed that he was voluntarily absent for this period owing to burn injuries that he suffered. Leave for the said period was neither obtained much less sanctioned. Absence from duties does not constitute break in service unless a specific rule or statute or regulation applicable to the Establishment prescribes such break in service. No such provision has been cited by the Petitioner before this Court and even before the Industrial Court that the Rules governing the services of the Respondent and similar employees in the Petitioner/ Establishment will be construed to have suffered a break in service owing to a particular period of absence or unauthorized absence.

11 The Management witness has specifically averred in the examination-in-chief in paragraph 3 that since the Respondent was absent from 22.06.2009, he was not allowed to join duties pursuant to his application dated 26.09.2011. It is undisputed that the disciplinary proceedings for the period of absence have not been initiated by the Petitioner.

12 In the light of the above, in my view, the principle “No Work-No Pay” will squarely apply to the case of the Respondent for the period 22.06.2009 till 26.09.2011. He, therefore, is not entitled for wages for the said period. Since he was disallowed from resuming duties pursuant to his application dated 26.09.2011 as is admitted by the Petitioner’s witness before the Industrial Court, he shall stand to gain all monetary benefits w.e.f. 26.09.2011.

13 Needless to state, absence for the period of two years and three months shall not be construed as break in service of the Respondent since no such provision has been pointed out by the Petitioner.

14 In the light of the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 09.07.2014 is modified to the extent of sustaining the continuous service granted, however, by depriving the Respondent of the wages for the period from 22.06.2009 till 26.09.2011.

15 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)