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

WRIT PETITION NO. 4372 OF 2014

Kadar Mohiuddin Shaikh,
Age : 43 years, Occ : Labour,
R/o Loni, Tal.Jamkhed,
District Ahmednagar.

...PETITIONER

-VERSUS-

Deputy Director,
Social Forest Department,
Near T.V. Center, Opp.Akashwani,
Shaskiya Madhyawarti Gruh,
Ahmednagar.

...RESPONDENT

....

Shri P.V.Barde, Advocate for the Petitioner.
Smt.Y.M.Kshirsagar, AGP, for the Respondent/State.

....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th July, 2015

Oral Judgment:

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

2 This Petition raises a short issue. The Petitioner, who was terminated with effect from 05/06/1992, had preferred Complaint (ULP) No. 221/1992 before the Labour Court, Ahmednagar. By the judgment and order dated 03/08/2005, the said Complaint was partly allowed and the Labour Court issued the following directions:-

- “1 Complaint is partly allowed.
2 It is hereby declared that the respondents have
engaged in unfair labour practices under Item 1
Clauses (b) and (f) of Schedule IV of MRTU & PULP
Act, 1971 and directed to desist the same.
3 The respondents are hereby directed to reinstate the
complainant on his previous post with continuity of
services and consequential benefits but without back
wages.
4 In the circumstances the respondents should pay cost
of Rs.500/-.”

3 It is not disputed by the learned Advocates that the Respondent challenged the order of the Labour Court before the Industrial Court in Revision (ULP) No. 67/2005, which was also dismissed by the judgment and order dated 03.11.2007. The Respondent preferred Writ Petition No.3772/2008 before this Court and by an order dated 12/06/2009, this Court dismissed the Writ Petition. As such, the directions issued by the Labour Court attained finality as the Respondent Department has not approached the Honourable Supreme Court.

4 The Petitioner was reinstated on 08/07/2009. The order directing reinstatement by the Labour Court is dated 03/08/2005. As such, approximately for about three years and 11 months the Petitioner was not reinstated in employment.

5 Shri Barde, learned Advocate appearing for the Petitioner/ Employee, makes a grievance that the Respondent/ Employer has kept the Petitioner out of employment despite the direction of the Labour Court on the pretext that the revision Petition was filed and then on the pretext that the Writ Petition was pending. In this backdrop, he was not reinstated and was rendered unemployed only by the conduct of the Respondent. He, therefore, preferred Application (IDA) No.422/2009 which has been erroneously rejected by the impugned order dated 20/02/2012.

6 Shri Barde indicates that the reason for rejection is that the Labour Court had not granted back wages and therefore, the Petitioner can not claim back wages by an application under Section 33C(2) of the Industrial Disputes Act, 1947. He submits that the conclusion drawn by the Labour Court is perverse and erroneous.

7 The learned AGP has strenuously supported the impugned judgment dated 20/02/2012 which led to the dismissal of the Petitioner's application.

8 The learned AGP submits that the principle of “No Work No Wages” applies. The Petitioner should have filed an application for reporting for duties or should have submitted his joining report. No efforts

were made by the Petitioner. There is no evidence before the Labour Court that after his complaint was allowed by the Labour Court by the judgment dated 03/08/2005, the Petitioner had approached the Respondent Department seeking reinstatement or disclosing his desire to report for duties or join duties. He waited till this Court dismissed the Writ Petition of the Respondent Department. He was reinstated on 08.07.2009 immediately after this Court delivered its order dated 12/06/2009 and dismissed the petition.

9 The learned AGP, therefore, submits that the Petitioner cannot keep himself away from work and at the same time, make a claim for unpaid salary. She, therefore, submits that the impugned judgment is sustainable and can not be termed as being perverse or erroneous.

10 Shri Barde counters the submissions of the learned AGP by stating that the Petitioner approached the Respondent/ Department for reinstatement. He was told that he should register himself under the Employment Guarantee Scheme and only thereafter an order of reinstatement can be issued. He submits that the Petitioner, therefore, got himself registered on 06/02/2006 as per the directions of the Respondent and his registration number is 040600048 dated 06/02/2006. He, therefore, submits that despite best efforts from the Petitioner, the

Respondent delayed the reinstatement on the pretext of pendency of proceedings initially before the Industrial Court and subsequently before the High Court.

11 Having considered the submissions of the learned Advocates, it is apparent that the issue pertains to whether, the Respondent could be permitted to keep the Petitioner away from reinstatement on the ground of pending proceedings and after passage of 4 years, reinstatement is awarded depriving the Employee of the wages from the date of the judgment of the Labour Court till the date of reinstatement.

12 It is undisputed that the judgment of the Labour Court dated 03/08/2005 has been sustained up to this Court. The direction of reinstatement is, therefore, sustained. It is also undisputed that there was no protective order in favour of the Respondent indicating that the direction of reinstatement was stayed during the pendency of the Revision Petition or the Writ Petition. In this backdrop, the Respondent could have reinstated the Petitioner without prejudice to its right in the subsequent proceedings.

13 I find from the impugned judgment of the Labour Court that it carried an impression that because the back wages have not been

granted to the Petitioner, he is not entitled to any wages till he is actually reinstated. Such observations in the impugned judgment read as under:-

“5. So far as wages claimed for earlier period was concerned, it was directed by Predecessor in order dated 03.08.2005 that applicant is entitled for continuity of service with consequential benefits but without back wages. During the pendency of Revision ULP No.67/2005 and 91/2005 and pendency of Writ Petition No.3773/2008, the applicant has never approached the respondent for a work, hence no work was made available to him. By misinterpreting the order of Labour Court in Complaint ULP No.221/1992 he is claiming the difference of wages from August, 2005 till July, 2009 i.e. till the date he was reinstated and provided the work. There was no such order of paying back wages by any Court, as claimed by the applicant. There is a rule of “no work no pay” in case of daily wage employee. It took time for different litigations. Finally from 18.07.2009 he was reinstated. When he approached for work and paid as per rate fixed by the Government under the EGS Scheme. Under circumstances, no question arise to pay any difference of wages for the intervening period during the pendency of different litigations. The applicant is taking undue advantage of the fact and order of the Court. Though he was entitled for continuity of service, he had not worked for said period, therefore, he is not entitled for any dues. Hence, application is not tenable. There is no pre-existing right. Hence, I answer point No.1 in the negative.....”

14 I find from the document shown by Shri Barde to this Court as well as to the learned AGP that the Petitioner has been registered in the Employment Guarantee Scheme. There was no reinstatement despite the order of the Labour Court. In this backdrop, it would be unfair to deprive

the Petitioner of the wages from the date of judgment of the Labour Court till his reinstatement on 08/07/2009, and more so, when the challenge to the said judgment has been rejected throughout and the direction of reinstatement was never stayed by any of the Courts.

15 In these peculiar facts of this case, I am of the view that the Petitioner is entitled for wages from 03.08.2005 to 08.07.2009. Since he is presently working in the Employment Guarantee Scheme and has accepted reinstatement on the said scheme, the wages for the above said period shall be paid to the Petitioner at the rate at which he was earlier paid his wages for July, 2009 pursuant to reinstatement. These wages shall be paid to him within a period of SIXTEEN WEEKS from today, failing which it shall attract interest at the rate of 6% per annum till the actual payment.

16 In the light of the above, I find that the impugned judgment is perverse and unsustainable. The same is, therefore, quashed and set aside. Application (IDA) No.422/2009 hence stands allowed as directed above.

17 This Writ Petition is allowed and Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)