

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 8819 OF 2013

Sidhdharth Bhaguji Bhingardive,
Age : 43 years, Occu. Service,
R/o. Plot No. 34, Googale Colony,
Buranagar, Ahmednagar,
Taluka & District Ahmednagar. ...Petitioner...

Versus

Bhingar Urban Co-operative Bank ltd,
Bhingar, Ahmednagar,
Through its Manager. ...Respondent...

.....

Shri. Parag Vijay Barde, Advocate for petitioner.
Shri. Sharad V. Natu, Advocate for respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 07.12.2015.

ORAL JUDGMENT :

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

2] The petitioner is aggrieved by the impugned judgment and order dated 28.8.2013 by which his Complaint (ULP) No.24/2008 has been dismissed.

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3] The petitioner joined the respondent as a Clerk on 9.8.2003. He was transferred to the Cantonment Branch on 10.6.2007. Since it was alleged that he had remained unauthorizedly absent, he was issued with a show cause notice dated 8.8.2007. He replied to the notice on 24.8.2007. A charge-sheet was issued on 1.3.2008.

4] On 15.4.2008, the petitioner preferred Complaint (ULP) No.24/2008 before the Industrial Court at Ahmednagar. By an interim order below Exhibit U-2 dated 22.7.2008, the Industrial Court permitted the petitioner to resume duties and directed the respondent to allow him to work and pay him the wages for the work done.

5] By the impugned judgment dated 28.8.2013, the complaint has been dismissed.

6] Shri S.V. Natu, learned Advocate appearing on behalf of the respondent – bank, submits that all along it has been the case of the respondent that the petitioner is unauthorizedly absent and is not reporting for duties. Though an inquiry has not been commenced and continued despite issuance of a charge-sheet on 1.3.2008, due to the filing of the complaint by the petitioner, even after the passing of the interim order dated

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22.7.2008, the petitioner remained absent from 21.8.2007 onwards. A criminal complaint u/s 48(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, was filed as late as in 2011.

7] The petitioner is personally present in the Court. He instructs Shri P.V. Barde, learned Advocate, to make a statement that if the management drops the disciplinary proceedings against the petitioner, he is willing to waive all back wages from the date of alleged unauthorized absentism till his reporting for duties on 6.8.2015 under orders of this Court dated 4.8.2015. Further instruction is that the respondent should give notional continuity of service so that there is no break in service and in the approaching appraisal for increments, the case of the petitioner be considered on its own merits and without being prejudiced by the litigation pending between the parties.

8] Shri S.V. Natu, learned Advocate for the respondent – management, graciously states that notional continuity of service would be granted and there shall be no break in service, provided the petitioner waives all

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the back wages. The inquiry proceedings initiated by the charge-sheet dated 1.3.2008 shall be dropped and the case of the petitioner will be considered in accordance with the service conditions for grant of increments in the approaching appraisal and in future.

9] Shri S.V. Natu further submits that the report of the Civil Surgeon dated 14.8.2015 in the light of the order of this Court dated 4.8.2015 indicates that the petitioner is fit to perform duties. Shri P.V. Barde confirms the said statement on instructions from his client present in the Court.

10] Considering the statements made and especially the statement made by the petitioner, who is present in the Court, this petition is disposed of by concluding that the petitioner shall be granted notional continuity of service from 1.9.2007 till his reporting for duties on 6.8.2015. He shall not be entitled for any wages for this entire period of his absence. The respondent shall consider the case of the petitioner in fairness for grant of increments in the approaching appraisal and shall not be prejudiced or influenced by the litigation between the parties, which has now been put to rest.

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11] This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)