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

WRIT PETITION NO. 8484 OF 2014

- 1 The Dhule and Nandurbar District Primary Teachers Cooperative Credit Society, Dhule.
Through it's Chairman.
Shri Fulsingh Arajun Vasave,
Age : Major, Occ : Service,
Having office at Abhiyanta Nagar,
Wadi Bhokar Road,
Deopur, Dhule.
- 2 The Dhule and Nandurbar District Primary Teachers Cooperative Credit Society, Dhule.
Through it's incharge General Manager,
Shri Sanjay Tukaram Pawar,
Age : Major, Occ : Service,
Having office at Abhiyanta Nagar,
Wadi Bhokar Road,
Deopur, Dhule.

...PETITIONERS

-VERSUS-

Shri Ulhas Shamkant Deshmukh,
Age : 44 years, Occ : Trade,
R/o Station Road, Sindhkheda,
Tal.Sindhkheda, Dist.Dhule.

...RESPONDENT

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Advocate for Petitioners : Shri Patil Shrikant S.
Advocate for Respondents : Shri A D Pawar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 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 judgment and order dated
27.08.2013 delivered by the Industrial Court, Dhule by which Revision
(ULP) NO.5/2011 filed by the Respondent herein has been allowed and he
has been granted reinstatement with continuity of service and full back-
wages from 29.04.2004.

3 I have heard Shri Patil and Shri Pawar, learned Advocates for
the respective sides at length.

4 It appears that before the learned Judge, Cooperative Court,
Jalgaon in Dispute (DHL) No.D-11/2014 preferred by the Petitioner
against the Respondent herein, it was categorically averred in paragraph 2
that the present Respondent was a Junior Clerk and was in permanent
employment of the Petitioner. He had taken loan of Rs.50,000/- for
construction of a home on 13.11.2000 and the same has not been repaid.
The Respondent Nos.2 and 3 in the said dispute were guarantors who
were also employees of the Petitioner Establishment.

5 Shri Patil submits that there was evidence before the Industrial Court that the Respondent had not worked from February, 2001. Yet, the Industrial Court concluded in its revisional jurisdiction that the Respondent was in employment and was orally terminated on 09.03.2004.

6 Shri Patil draws my attention to the observations of the Industrial Court in paragraphs 13, 14 and 15.

7 He further submits that in paragraph 13, the Industrial Court analyzed the evidence of Mr.Sanjay Tukaram Pawar, who was the Manager of the Petitioner and its witness. He specifically stated that there was no record to indicate that a written appointment order was issued to the Respondent.

8 In cross-examination, the said witness referring to the muster roll Exhibit C/8 for the period May, 1999 to February, 2001, stated that the name of the Respondent/ Employee is on the muster roll of Shirpur Branch. From February, 2001, there are no signatures of the Respondent.

9 Shri Patil, therefore, makes a grievance that in the absence of any payment of monthly wages and in the absence of any attendance record, the Industrial Court could not have presumed that the Respondent

was in continued employment till 09.03.2004 merely because an amount of Rs.50,000/- was granted as loan amount on 13.11.2000. He submits that since the impugned judgment amounts to be a conclusion not based on facts, but on assumptions and presumptions, the perversity is writ large on the face of the impugned judgment. He, therefore, prays for setting aside the impugned judgment.

10 In the alternative, Shri Patil submits that they are willing to reinstate the Respondent in employment as a Junior Clerk with immediate effect. However, he shall have to waive the back-wages. He further submits that the present Respondent is running a hotel and beer bar by name “Prabhat” at House Nos.1730 and 1731, Sindkheda, District Dhule. He further submits that the Respondent presently is also an elected member of a public body.

11 Shri Pawar, learned Advocate for the Respondent, has strenuously defended the impugned judgment. He submits that paragraph 2 of the Dispute before the Cooperative Court indicates that the Petitioner admits that the Respondent was permanent Junior Clerk with the Petitioner Establishment. The argument that the Respondent was not the employee of the Petitioner is, therefore, put to rest.

12 However, to a specific query made by the Court, Shri Pawar could not point out on the basis of the record that the Respondent had worked from February, 2001 till March, 2004. He, however, reiterates that the Respondent had indeed worked though the Petitioner succeeded in wiping out evidence to show that he was not in employment. He has placed heavy reliance on the conclusions of the Industrial Court in paragraphs 13 to 18 of the impugned judgment. He, therefore, prays for the dismissal of this petition.

13 Shri Pawar, however, submits that he is unable to comment whether, the Respondent is presently operating a hotel-cum-beer bar and as to whether, he is an elected person on a public body. He further submits that he is unable to make a statement whether, the proposal of the Petitioner that he would be reinstated, is acceptable or not.

14 Having heard the learned Advocates, I find that the Industrial Court has drawn its conclusions in paragraphs 13, 14 and 15 by which the judgment of the Labour Court dated 07.01.2011 dismissing Complaint (ULP) No.6/2004 filed by the Respondent, has been set aside.

15 It is noteworthy that the Respondent claimed to be orally terminated on 09.03.2004 and had filed the complaint before the Labour

Court which was dismissed. In paragraphs 13, 14 and 15 of the impugned judgment, the Industrial Court has concluded that the muster roll for April, 1999 to February, 2001 at Exhibit C/8 indicates that the Respondent was working and attending his duties. The averment of the Petitioner before the Cooperative Court in paragraph 2 of the Dispute also indicates that the Petitioner admits that the Respondent was a permanent Junior Clerk.

16 However, I do not find any evidence which the Industrial Court has referred to, to conclude that the Respondent was working with the Petitioner in between February, 2001 upto 09.03.2004. There is no evidence of the attendance of the Respondent, payment of wages to the Respondent and he having worked from February, 2001 till 09.03.2004.

17 In this backdrop, the Industrial Court could not have arrived at a conclusion that merely because there were some provident fund deductions for the earlier part of employment and a house loan of Rs.50,000/- was given on 13.11.2000 to the Respondent, it is indicative of the Respondent having worked till 09.03.2004.

18 In the light of the above, this Writ Petition is allowed. The impugned judgment and order dated 27.08.2013 is quashed and set aside.

19 Revision (ULP) No.5/2011 is remitted back to the Industrial Court at Dhule for enabling the litigating sides to refer to the record and proceedings of Complaint (ULP) No.6/2004. The Industrial Court shall consider the said record and proceedings in the light of the submissions of the learned Advocates and shall, thereafter, decide the said revision strictly on the basis of the record and proceedings received from the Labour Court and by considering that it's jurisdiction under Section 44 of the MRTU & PULP Act, 1971 is a revisional jurisdiction.

20 The parties shall appear before the Industrial Court on 04.01.2016. Formal notices need not be issued by the Industrial Court.

21 The Petitioner states that the offer made by the Petitioner is open to the Respondent to be considered and if accepted, the litigating sides can request the Industrial Court to dispose of the revision petition.

22 Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)