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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1353 OF 2015

Sayyed Rahimkha Kasam,
Age : 37 years, Occ : Service,
R/o Ward No.1, Godhawani Road,
Tal.Shrirampur, District Ahmednagar.

...PETITIONER

-VERSUS-

Shrirampur Municipal Council,
Shrirampur, District Ahmednagar.
Through it's Chief Executive Officer.

...RESPONDENT

...

Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondents : Shri Tambe Rahul A.

...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 19th October, 2015

<u>Oral Judgment</u>:

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

2 The Petitioner/ Employee has challenged the order dated 30.09.2014 delivered by the Industrial Court on the application (Exhibit U/2) for interim relief filed by the Petitioner along with Complaint (ULP) No.220/2013.

3 The contention of the Petitioner is that his prayer below application Exhibit U/2 was that he is willing to work and he may be permitted to report for duties. Besides this prayer, he had also prayed that he should be paid his wages w.e.f. 01.04.2013.

4 The Petitioner submits that the Industrial Court while rejecting the application vide the impugned order, has erroneously concluded in paragraph 14 that "*At this juncture I find that complainant is under suspension on and from 16.03.2005 as he has remained unauthorizedly absent on the ground of ill health without permission of head of Department*."

5 Shri Barde, learned Advocate for the Petitioner/ Employee, submits that it is neither the case of the Respondent/ Employer that the Petitioner has been terminated, nor has it claimed that the Petitioner was under suspension as on 25.11.2013 when the complaint was lodged with the Industrial Court.

6 Shri Tambe, learned Advocate for the Respondent/ Employer, has strenuously defended the impugned order. However, he submits on the basis of the record that the Petitioner was not suspended on the date of

the application for interim relief. In the past, he was under suspension and which has later on been revoked.

7 Shri Tambe, however, hastens to add that the Respondent has initiated disciplinary proceedings against the Petitioner for his continued and unauthorized absence. The enquiry is under way. The charge sheet -cum- show cause notice has been issued on 17.10.2015.

8 Shri Barde submits, on instructions, that the Petitioner will not hesitate to participate in the enquiry. However, he reiterates that he has not been suspended pending the disciplinary proceedings. As such, he is entitled to discharge his duties as and when he reports for duties.

9 Considering the fact situation as has been recorded above in the light of the submissions of the learned Advocates, I find that the Industrial Court has misdirected itself.

10 The Petitioner had prayed for reporting for duties and since the Petitioner claimed that the Respondent is disallowing him to report for duties, he had invoked the jurisdiction of the Industrial Court for seeking orders that the Respondent shall not prohibit the Petitioner from reporting for duties. It is not the case of the Respondent that the Petitioner has been

placed under suspension. It is also not it's case that they are prohibiting the Petitioner from reporting for duties.

11 In the light of the above, the impugned order dated 30.09.2014, by which the application filed by the Petitioner for reporting for duties has been rejected, is perverse and erroneous. The same is, therefore, quashed and set aside. The Writ Petition is partly allowed.

12 The Petitioner shall report for duties from 21.10.2015. In the event, there is no other legal impediment, the Respondent/ Employer shall not prevent the Petitioner from reporting for duties and shall pay him wages as per the work performed on the day he is present.

13 Insofar as the contention of the Petitioner that the Respondent has disallowed him for reporting for duties is concerned, the same shall be subject to the result of Complaint (ULP) No.220/2013, which is pending before the Industrial Court.

14 Rule is made partly absolute in the above terms.

15 No costs.

(**RAVINDRA V. GHUGE, J.**)