

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 1935 OF 2015

Kolhapur Zilla Sahakari Nokar Union. ... Petitioner.

V/s.

Shetkari Sahakari Sangh Ltd. through
its Secretary, Mr. Appaso Niramal. ... Respondent.

Mr. Sandeep S. Koregave for the Petitioner.
Mr. Saurabh Pakale i/b. Shankar M. Katkar for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 30 NOVEMBER, 2015.

ORAL ORDER :-

Heard learned Counsel for the Parties. Rule. Rule made returnable forthwith. Respondent waives service. By consent taken up for disposal.

2. A short issue in this Petition is whether the Petitioner is entitled to 30% back wages or 50% back wages upon his reinstatement. The Petitioner filed a Complaint (ULP) No. 165 of 2009 challenging the termination of the concerned employee Sarjerao G. Patil from services. According to the

Petitioner, the concerned employee ought to have been continued till the age of 60 which was the age of superannuation. The Labour Court allowed the Complaint (ULP) No. 165 of 2009 by order dated 20 February 2013 and directed that the concerned employee be taken back in service with 50% back wages. This order was challenged by the Respondent by filing Revision (ULP) No. 22 of 2014. The Industrial Court, by impugned order dated 11 September 2014, disposed off the Revision by confirming the order of the Labour Court as regard reinstatement, however modified the back wages from 50% to 30%. This order is challenged by the Petitioner in the present Petition.

3. The learned Counsel for the Petitioner has placed on record two orders passed by this Court in Writ Petition Nos. 8060 of 2006 and 5081 of 2015, wherein this Court has concluded the issue that the age of retirement of the concerned employees is 60 years. In Writ Petition No. 8060 of 2006 this Court has observed as regard back wages that since the Respondent had illegally reduced the age of retirement by a Resolution and the workmen concerned were entitled to continue in service till the age of 60 they were entitled to the full back wages. In Writ Petition No. 5081 of 2015 the facts were that the Labour Court had granted reinstatement of the employees and with order of 50% back wages. Both the Petitioner – Union and the Respondent had filed Revision Application and the Industrial Court had modified the order of the Labour Court and granted 100% back wages to the

employees therein. The Respondent had challenged the order by way of a Writ Petition which was dismissed with cost of Rs.10,000/-.

4. The learned Counsel for the Petitioner submitted that the Industrial Court had rightly reduced the amount of back wages because the Petitioner had not stated the names of the institution where he attempted to get a job and also that he was running a grocery store. As regard running a grocery store it is only an assertion of the Respondent which has been denied, thereafter no further material is placed on record by the Respondent. Once the Petitioner had stated that he was not gainfully employed and that the Labour Court had granted 50% back wages, cogent material had to be produced by the Respondent to seek reduction of the amount of back wages further. In fact, in view of the orders passed as referred to earlier between the same parties, it has been held that the concerned employees are entitled to 100% back wages. In the present case the Labour Court had already granted 50% back wages which, even assuming there is some substance in the case of the Respondent, was sufficient enough deprivation of the entitlement. There was absolutely no warrant for reducing the back wages even further to 30%. The entitlement to back wages cannot be casually reduced as an employee is entitled to back wages, once he shows that there has been an illegal termination.

5. In the circumstances, the order passed by the Industrial

Court reducing the back wages to 30% instead of 50% is required to be quashed and set aside and it is accordingly set aside. Rest of the order passed by the Industrial Court is confirmed. The Respondent shall pay the amount due to the Petitioner within period of eight weeks from today.

6. Rule made absolute accordingly.

(N.M. JAMDAR, J.)