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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5693 OF 2014

Maharashtra State Road Transport Corporation .. Petitioner

Vs.

Dayanand Hanmant Pisal .. Respondent

Mr.G.S.Hegde a/w Mr.C.M.Lokesh, Advocate for the Petitioner.
Mr.N. A.Kulkarni, Advocate for Respondent.

CORAM : R.G.KETKAR, J.

DATE : 03rd February, 2015

P.C. :

. Heard Mr.G.S.Hegde, learned Counsel for the petitioner and Mr.N.A.Kulkarni, learned Counsel for the respondent at length.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 23/08/2013 passed by the learned Presiding Officer, Labour Court, Satara in Reference (IDA) No. 97 of 2005. By that order, the Labour Court partly allowed the reference and declared that the petitioner has committed unfair labour practices while terminating the respondent. The Labour Court directed the petitioner to cease and desist from the commission of unfair labour practices. The Labour Court set aside the order of termination and directed the petitioner to

reinstate the respondent with continuity of service and to pay 80% back wages for the period from 01/10/2005 to 31/05/2012. The petitioner is ordered to pay costs of Rs.1,000/- to the respondent. The order of termination was substituted by withholding of one annual increment for a period of one year from 01/10/2005.

3. In support of this petition, Mr.Hedge reiterated the submissions that were advanced before the Labour Court. He submitted that the Labour Court wrongly held that the punishment of dismissal for remaining absent from 01/07/1997 to 14/07/1997 was shockingly disproportionate. He submitted that having regard to the past conduct of the respondent, the penalty of termination cannot be termed as shockingly disproportionate. He further submitted that the Labour Court also committed error in awarding 80% back wages for the period 01/10/2005 to 31/05/2012. The respondent did not give details as regards the applications made by him for securing jobs in various companies. In paragraph 2 of the cross examination, the respondent admitted that he could not produce acknowledgments showing that he had made applications for securing jobs. The respondent admitted that he has 3 acres agriculture land out of which 1 acre is bagayat land. The respondent is engaged in agricultural operations and is gainfully employed. He, therefore, submitted that in any case, the order directing 80% back wages for this period is liable to be set aside.

4. On the other hand, Mr.Kulkarni supported the impugned order. He submitted that while recording the finding that penalty inflicted is shockingly disproportionate, the Labour Court held that past record of the respondent was not produced either before the Enquiry Officer or before the Labour Court. The respondent remained absent only between 01/07/1997 and 14/07/1997 and because of this, he was dismissed from the services. The said penalty is shockingly disproportionate. He also invited my attention to the evidence of respondent which is considered by the Labour Court in paragraph 16 and submitted that no case is made out for invocation of powers under Articles 226 & 227 of the Constitution of India as the Labour Court has substituted penalty of termination by imposing penalty of withholding one year's increment for a period from 01/10/2005.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondent remained absent from duties from 01/07/1997 to 14/07/1997. The departmental enquiry was conducted against him. Before the Enquiry Officer, past service record of the respondent was not produced. Even before the Labour Court, past service record of the respondent was not produced. On account of his absence from duties from 01/07/1997 to 14/07/1997, the petitioner terminated service of the respondent. The

Labour Court after considering the material on record held that penalty was shockingly disproportionate. The Labour Court has substituted that penalty in terms of clause 5 of the operative order.

6. In view thereof, I do not find that the Labour Court committed any error in setting aside the order of termination by ordering reinstatement with continuity of service.

7. So far as the payment of back wages is concerned, the Labour Court directed the payment of 80% of back wages for the period of 01/10/2005 to 31/05/2012 when the respondent retired. In other words, the Labour Court did not award 100% back wages. At the same time, the Labour Court also inflicted penalty of withholding of one annual increment for one year from 01/10/2005. In paragraph 2 of the cross examination, respondent admitted that he has 3 acres agriculture land out of which 1 acre is bagayat land. He, however, denied that he earns Rs.3.50 to 4 lacs per year. After perusing the evidence of the respondent as also having regard to the fact that the petitioner did not substantiate that the respondent was gainfully employed, I do not find that the Labour Court committed any error in ordering payment of 80% back wages.

8. In view thereof, no case is made out for invoking powers under Articles 226 & 227 of the Constitution of India. Hence, petition fails and the same is dismissed.

(R.G.KETKAR, J.)