

Sequeira

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

WRIT PETITION NO. 4541 OF 2000.

Sahadeo Gopal Wasgaonkar,
165/3, "E" Rajarampuri,
Kolhapur.

.. Petitioner

Vs.

1. Bhogawati Sahakari Sakhar
Karkhana Ltd.,
Shahu Nagar, Taluka Karvir,
District Kolhapur.

2. Judge, Labour Court,
Kolhapur.

3. Member, Industrial Court,
Kolhapur.

.. Respondents

Along with

WRIT PETITION NO. 6826 OF 2000.

Bhogawati Sahakari Sakhar
Karkhana Ltd.,
Shahu Nagar, Taluka Karvir,
District Kolhapur.

.. Petitioner

Vs.

1. Sahadeo Gopal Wasgaonkar,
165/3, "E" Rajarampuri,
Kolhapur.

2. Member, Industrial Court,
Kolhapur.

.. Respondents

Mr.M.S.Topkar, for Petitioner in W.P. No.4541 of 2000 and Respondents in W.P. No.6826 of 2000.

Mr.S.S.Pakale, for Respondents in W.P. No.4541 of 2000 and Petitioner in W.P. No.6826 of 2000.

***CORAM: N.M.Jamdar J.
Friday 21 August, 2015***

Oral Judgment :

These two Writ petitions arise from the same proceedings and challenge the same impugned order and the parties in both the petitions are the same. The petitions have been argued and heard together and are being disposed of by this common Judgment.

2. Writ Petition No.4541 of 2000 is filed by Mr.Sahadeo Gopal- the Employee and Writ Petition No.6826 of 2000 is filed by Bhogawati Sahakari Sakhar Karkhana, who is the Employer. The Employee Wasgaonkar was working with the Employer-Karkhana as a storekeeper from 1957 till 22 January 1987. His services were terminated. The Employee was suspended pending the inquiry and was issued charge-sheet on 4 August 1980. It was alleged by the Employer that the Employee committed misconduct such as dishonesty, fraud, forgery and breach of trust. Various proceedings were undertaken and number of litigations ensued between the parties on different issues and it is not necessary to narrate them in detail. The present petitions arise from the application filed under the Bombay Industrial Relations Act, 1946 (the Act). By this

application under Section 78 and 79 of the Act, the Applicant challenged his dismissal dated 22 January 1987. The application was heard by the learned Labour Court Judge, Kolhapur. The learned Judge accepted the case of the Employee as regards his termination being illegal and granted relief of reinstatement to the Employee with continuity of services. However, without any back wages. The learned Labour Court Judge accordingly partly allowed his application by his order dated 31 December 1997. Both the Employee and Employer filed appeals in the Industrial Court Kolhapur under Section 84 of the Act. The Employer challenged the direction as regards reinstatement with continuity of service and Employee challenged the deprivation of back wages. The learned Industrial Court took note of the fact that the Employee had reached the age of superannuation on 23 November 1993 and accordingly held that the relief of reinstatement is not possible. As regards non grant of back wages, the learned Industrial Court confirmed the findings of the learned Labour Court that the Employee had sufficient means and he was economically sound and was not entitled to any back wages. Both the appeals were dismissed by the learned Industrial Court Judge by order dated 9 June 1999 which has been challenged by both the Employer and Employee by their respective petitions.

3. It is informed that the Employee is now 83 years of age. He reached the age of superannuation 22 years back and there is no question of grant of reinstatement in his favour and which has been so rightly observed by the Courts, as even then the Employee had

reached the age of superannuation. Mr.Topkar, the learned counsel for the Employee has therefore, addressed the Court as regards the back wages. Mr.Pakale, the learned counsel for the Employer has submitted that payment has been made of certain retiral benefits to the Employee however, by admitting the petitions these payments have been made subject to the outcome of the petitions.

4. As regards the denial of back wages is concerned, both the Labour Court and Industrial Court have analysed the financial position of the Employee in detail. The evidence was led by the parties as regards the financial condition of the Employee. It is brought on record that the Employee is well educated. He was a producer member of the Employer Karkhana. He had agricultural lands, house properties including a three-storeyed building. He had given certain property on rent. He owns various vehicles. He was also landlord of the building where the the office of Labour Court and Industrial Court is situated. It has also come on record that the rent received by him is reflected in Income-Tax returns. For some time the Employee was a partner in a Company where he earned substantial income. The documentary evidence as regards the construction carried out by the Employee as well as his property was produced on record and each document was analysed by the Labour Court which finding has been confirmed by the administration. In view of such voluminous record, it cannot be said that the finding that the Employee was financially sound is perverse. Though Mr.Topkar, has urged that this was the position

prior to his termination, but nothing is placed on record that the financial condition of the Employee has deteriorated. It is not possible to re-appreciate the evidence and therefore, the order depriving back wages to the Employee cannot be interfered.

5. The only question now remains regarding the retiral dues which have been paid to the Employee by the Employer which have been made subject to the outcome of the petitions.

6. As on today, the Applicant is 83 years of age. He had joined the services of the Employer Karkhana in the year 1957. The Employee has been associated with the Employer Karkhana for several years till the incident in question occurred. The Employer has voluntarily paid the retiral dues to the Employee and though the petition of the Employee is being rejected, considering the age of the Employee and the fact that the litigation which has commenced in the year 1980, need to be given quietus, it will not be in the interest of justice to pass any order at this stage that the Employee should return the retiral dues paid to him by Employer Karkhana voluntarily. Such course of action is not warranted in the interest of justice and fairness.

7. In view of the above position, both the Writ petitions cannot be entertained hence, **Rule discharged**. No order as to costs.

(N.M.Jamdar J.)

“I certify that this Judgment uploaded is a true and correct copy of original signed Judgment.”

Uploaded by :

Mrs.M.L.N.Sequeira, Personal Assistant
to Hon'ble Shri Justice N.M.Jamdar.

Uploaded on :

1 September 2015.