

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

WRIT PETITION NO.10229 OF 2014

Hindustan Petroleum Corpn. Ltd
Pune Retail Regional Office
3/C, Dr. Ambedkar Road,
Next to Nehru Memorial Hall,
Camp, Pune-411 011.

.. Petitioner.

V/s

Raghunath Bhagwan Satpal
341, Zende Galli,
Pandharpur
Dist. Solapur, Maharashtra

.. Respondent.

Mr. Lancy D'Souza a/w Mr. V.M. Parkar, for petitioner.
Mr. Jaydeep Deo, for respondent.

Coram : Smt. R.P SondurBaldota, J.

Date : 13th April, 2015

P.C.

1. This petition is directed against the award dated 28th February, 2014 by which The Central Government Industrial Tribunal has directed the reinstatement of the respondent with continuity of service but without the back wages.

2. The respondent was served with the charge sheet dated 28th February, 2003 alleging that he had been remaining absent from duty without permission/intimation since 28th October, 2002. The

intimations sent to the respondent for reporting to the duty were not followed. According to the petitioner, the respondent had unauthorisedly remained absent for 92 days in the year 2001 and 166 days in the year 2002. This was in addition to the various types of leaves taken by him and as such, respondent was guilty of misconduct in terms of Clause No.31(5), 31(7) and 31(38) of the Standing Orders applicable to him. The defence of the respondent was that he had remained absent on account of his ill health and during the relevant period, he was infact once examined by the doctor of the petitioner. For passing the order of reinstatement, the Central Government Industrial Tribunal noted that petitioner, during the course of trial, did not produce the leave register of respondent, which alone could establish the charge of absenteeism without permission/intimation and awarded his reinstatement in service. At para-28 of the impugned order, the learned Tribunal observes that the petitioner has not produced leave register of the employee and was unable to tell the leave account of the respondent for the year 2001-2002. During the cross examination, the witness of the petitioner had admitted that in the muster-roll, the entry of medical leave is appearing above mark of absence of the respondent. This

would mean that the respondent was infact suffering from ill health. The Tribunal, however, considering the nature of the duty of respondent i.e. a driver for transport of oil, diesel and petrol to their customers by tankers, held that petitioner must have spent huge amount for engaging casual drivers in the place of respondent to transport the petrol etc. to its customers. Since, the petitioner had to spent considerable amounts for engaging casual drivers in place of respondent, he would not be entitled to grant of back wages. The view taken by the Tribunal is reasonable and probable in the facts of the case and the same does not deserve to be interfered with in the extraordinary jurisdiction of this Court. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)