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

CIVIL WRIT PETITION NO. 11156 OF 2014

The State of Maharashtra through
the Principal Secretary and Ors. ... Petitioners.

V/s.

Mr. Abdul Karim Paigambar Mujawar. ... Respondent.

Mr. C.P. Yadav, AGP for the Petitioner - State.

Ms. Nayana Buch a/w. Mr. Shailesh Kashinath More for the
Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 29 SEPTEMBER, 2015.

ORAL ORDER :-

By this Petition the Petitioner – State challenges the order passed by the Industrial Court, Solapur dated 30 October 2013 directing the Petitioner – State to reinstate the Respondent on the post as held, with continuity of service, alongwith other consequential benefits, except further back wages.

2. The Respondent joined the services of the Petitioner – State in the year 1978 as a Junior Clerk in Minor Irrigation (EGS)

Department. On 31 January 1982 his services were terminated. He filed a Complaint (ULP) No. 40 of 1982 in the Labour Court, Solapur. His complaint was allowed and the Petitioner was directed to reinstate the Respondent and to pay 25% of back wages. This order was challenged by both the Petitioner and the Respondent in the Industrial Court, Solapur. The Industrial Court dismissed the revision of the Petitioner – State and allowed the revision filed by the Respondent and directed full back wages to be paid to the Respondent. The Petitioner – State filed a Writ Petition bearing No.1419 of 1994. In the Writ Petition an interim order came to be passed on 24 November 1994. The final order thereafter was passed and the Writ Petition was disposed off. Since the Respondent was not taken back in service, he filed the present Complaint (ULP) No. 16 of 2006. As regard the back wages, the Respondent was paid Rs.1,69,046/- which fact is accepted by the learned Counsel for the Respondent.

3. In the present complaint the Industrial Court took note of the earlier orders passed by the Labour Court, Industrial Court and this Court. The Labour Court held that there is no delay in filing the complaint as the Respondent was not reinstated on the ground of pendency of Writ Petition and the fact that the Writ Petition was disposed off was not informed to the Respondent. The Industrial Court also noted submission of the Petitioner that the Respondent was working in a Sugar factory.

4. The order passed by the Industrial Court on 22 December 1992 has become final and inspite of this position, the Petitioner – State has not reinstated the Respondent. The learned AGP sought to contend that the Respondent was not reinstated because letters were sent to him to join in the year 1994, however, he avoided to join the services. However, these letters are of no consequence as there is no such attempt made after passing of the impugned order which directs the Petitioner to reinstate the Respondent. On the other hand, the Petitioner has chosen to challenge the direction to reinstate the Respondent. As far as the Respondent working elsewhere, this argument was made before the Industrial Court and the Respondent had made a submission that the Petitioner should reinstate on the post before continuity of service. Thus, the Respondent had not given up it's claim for reinstatement.

5. In the circumstances, having made no effort to call the Respondent to join the services, instead challenging the order by way of this Writ Petition, the Petitioner – State cannot be heard to contend that the Respondent should not be allowed to join the services. As stated earlier, inspite of the order passed in the year 1994, reinstatement has not been granted.

6. The learned Counsel for the Respondent accepted the position that till the date of passing the impugned order dated 30 October 2013, the Respondent is not entitled to any back wages,

however contended that after this order till the Respondent crossed the age of superannuation on 31 December 2015, the back wages be paid to him. As stated earlier, after the impugned order, no attempts have been made by the Petitioner to call upon the Respondent to join services when he was willing to join the services. The request made is thus fair and reasonable. Furthermore, if the Petitioner had not reinstated the Respondent in the services from 1994, he cannot be expected to live without any means.

7. By order dated 3 July 2015, the Petitioner was directed to calculate the amount of back wages and other benefits payable till the date he reached the age of superannuation. Statement has been placed on record by the learned AGP which is signed by both the learned Counsel which is taken on record and marked 'X'. The Petitioner therefore will have to pay the amount to the Respondent as per this statement.

8. The learned Counsel for the Respondent however submitted that there is dispute regarding the quantum of gratuity payable which according to her has been calculated less. The learned AGP asserts that the calculations regarding gratuity are correct.

9. It will be open to the Respondent to move the Authority under the Payment of Gratuity Act for carrying out the

calculations, which application will be considered on its own merits. However, since the amount mentioned in the chart is not disputed by the Petitioner – State, same amount considering the fact that the litigation is pending since the year 1994 will be paid to the Respondent within period of twelve weeks from today. It is clarified that in case, in law, the Respondent is entitled to any amount higher than the one provided in the chart, the acceptance of payment by the Respondent as per the chart will be without prejudice to rights and contentions of the Respondent.

10. Writ Petition is accordingly disposed off in above terms.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Order.