

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.110 OF 2012

The State of Maharashtra, Thr. Chief Conservator of Forests & Anr.

-vs-

Namdeo Sakharam Kolwate & Anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. Kukde, Advocate for petitioner.

Shri P.P. Deshmukh, Advocate for respondent Nos.1-A to 1-H.

Shri M. A. Kadu, AGP for respondent No.3.

CORAM : A.S.CHANDURKAR, J.

DATE : JULY 15, 2015

Heard.

Challenge in the present writ petition is to the order passed by the Labour Court partly allowing the complaint filed by the original respondent No.1 and directing the petitioner to grant pensionary benefits to him but denying claim for reinstatement with continuity in service. This order has been confirmed by the learned Judge of the Industrial Court.

The original respondent No.1 was employed with the petitioner on the post of Forest Guard since 1965. He was transferred by order dated 15/06/1985 and he took charge of his post at the transferred place on 24/06/1985. He however remained absent from duty without any intimation. Hence departmental proceedings were initiated against him which culminated in an order of termination dated 21/11/1994 with retrospective effect from 16/06/1985. This order

was challenged by filing a complaint under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971.

The Labour Court initially allowed the complaint by order dated 20/10/2000. The Industrial Court by its order dated 29/07/2003 remanded the proceedings for fresh consideration. After remand, the Labour Court found that the original respondent No.1 had remained absent without permission and said fact was admitted by him. It also found that the original respondent No.1 was examined by the Medical Board and that his absence was on account of being mentally unstable. It therefore held that as the absence was without permission, no relief of back-wages could be granted. It further held that pensionary benefits should be granted to the original respondent No.1 as the punishment of dismissal was shockingly disproportionate. The order granting pensionary benefits was maintained by the Industrial Court in the revision application filed by the petitioner.

Shri A. Kukde, learned counsel appearing for the petitioners submitted that the punishment of dismissal was justified considering the absence of the original respondent No.1 was without due permission. He submitted that this absence was for a period of almost seven years and seven months and therefore the original respondent No.1 was not entitled to any relief whatsoever. He also submitted that the Labour Court had no jurisdiction to try the complaint and the jurisdiction was vested with the Administrative Tribunal.

Shri P. P. Deshmukh, learned counsel for the legal heirs of respondent No.1 supported the impugned order. According to him, the relief of grant of pensionary benefits was legal and sustainable in view of the fact that the original respondent No.1 had been found to be mentally unstable after his examination by the Medical Board. There was thus justification for his absence which fact was duly admitted. He further submitted that the refusal to grant relief of back-wages had been accepted by the original respondent No.1 and therefore grant of pensionary benefits by the Labour Court did not call for any interference. He further submitted that the Labour Court had jurisdiction to try the complaint considering the nature of duties done by the original respondent No.1.

Shri M. A. Kadu, learned Assistant Government Pleader appears for respondent No.3.

Having heard the respective counsel and having perused the material on record, it cannot be said that there was any error committed in granting partial relief of pensionary benefits to the original respondent No.1. As per Exhibit-49, the Medical Board had opined that the original respondent No.1 was in an unstable mental condition after 28/11/1985. It is also relevant to note that the original respondent No.1 was in employment since 1965 for almost 20 years and there was no complaint about his services. It is in that background that both the Courts have found that the relief of back-wages could be denied while granting the relief of

pensionary benefits. Consideration on the aspect of jurisdiction is also legally correct in view of nature of duties of the original respondent No.1.

In view of aforesaid there is no reason to interfere in writ jurisdiction. Writ petition is therefore dismissed with no order as to costs.

JUDGE