

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2752 OF 1995
WITH
CIVIL APPLICATION NO.5809 OF 1995

1. Depot Manager,
Maharashtra State Road
Transport Corporation,
Manjalgaon Depot,
Manjalgaon.
2. The Divisional Controller,
Maharashtra State Road
Transport Corporation, Beed -- PETITIONERS

VERSUS

Abdul Rahim Khan,
Age-Major, Occu S.T.Mechanic,
R/o New Idgah Naka,
In front of Dr.Dolas's house,
Gajanand Nagar, Beed -- RESPONDENT

None for the parties.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/09/2016

ORAL JUDGMENT :

1. The petitioner/Corporation has challenged the judgment of the Industrial Court dated 17/02/1995, by which the revision petition filed by the respondent/employee has been partly allowed and he has been granted back wages from the date of termination, except the period from 03/12/1990 to 01/11/1991.

2. The petitioner/Corporation contends that the respondent was absent from duties on two dates which are 07/09/1989 and 08/09/1989. He was issued with a charge sheet for the absence of one month and by the order of punishment dated 04/12/1990, he has been dismissed from service. He preferred a first department appeal, which was rejected on 28/02/1991. His second department appeal is pending. It was erroneously mentioned in the order of dismissal that his absence was of two days, when in fact he was absent for one month.

3. The respondent preferred Complaint (ULP) No.332/1992 before the Labour Court at Aurangabad. After considering that the charge of absence was proved, the Labour Court concluded that the punishment of dismissal from service was shockingly disproportionate. Therefore, By judgment dated 25/10/1993, the respondent was reinstated in service with continuity. However, he was deprived of entire back wages.

4. The Corporation did not challenge the said judgment before the Industrial Court u/s 44 of the MRTU and PULP Act, 1971. The respondent/employee preferred his revision petition. He prays for

100% back wages since the punishment of dismissal from service for absence of two days was held to be shockingly disproportionate. By the impugned judgment dated 17/02/1995, the Industrial Court concluded that the respondent could be deprived of the back wages for the period 03/12/1990 till 01/11/1991 when he preferred his Complaint before the Industrial Court for challenging his dismissal w.e.f.04/12/1990, on 01/11/1991.

5. This Court, by its order dated 26/06/1995, admitted the petition and did not grant any interim relief.

6. It is now settled in the light of the judgment of the Hon'ble Supreme Court in the matter of J.K.Synthetics Ltd., Vs. K.P.Agrawal and another, [(2007) 2 SCC 433] that back wages are not to be granted mechanically. The employee has to prove that he has been unemployed ever since his dismissal.

7. In the instant case, the respondent has been dismissed from service from remaining unauthorizedly absent for two days. Though it was contended that the respondent was absent from 07/07/1989 to 08/08/1989, it was wrongly typed in the enquiry proceedings that he was absent for two days. The Industrial Court considered the

record and concluded that the respondent was absent unauthorizedly considering the fact that the order of dismissal erroneously mentioned only two days of absence. In this backdrop, the Industrial Court granted full back wages to the respondent except for the period 03/12/1990 to 01/11/1991 which is the period of delay caused by the respondent in filing the complaint before the Labour Court.

8. Even if it is held that the respondent was absent from 07/07/1989 to 08/08/1989, the punishment of dismissal from service for unauthorized absenteeism for one month is shockingly disproportionate. His past record placed before the Labour Court indicated that he was unauthorizedly absent and for which he was punished on a few occasions.

9. He did not state in his evidence that he tried to obtain alternate employment. However, he has specifically stated that he was unemployed ever since his termination. Considering the law as it stood then, the Industrial Court has granted back wages, as noted above. This Court has not caused any interference while admitting this petition and has not stayed the direction of the Industrial Court to pay the back wages.

10. Considering the above, as well as the passage of time and keeping in view that the respondent/employee by now may have retired from service, as he joined employment 46 years ago in 1970, I do not find any reason to interfere with the impugned judgment.

11. This petition, being devoid of merit, is therefore, dismissed. Pending civil application, if any, does not survive and stands disposed of. Rule is discharged.

(RAVINDRA V. GHUGE, J.)