

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4213 OF 1995

The Chief Executive Officer,
Zilla Parishad,
Ahmednagar

– PETITIONER

VERSUS

Namdeo Sidhu Raskar,
At and Post : Mali Babhulgaon,
Tq. Pathardi,
Dist.Ahmednagar

– RESPONDENT

Mr.S.T.Shelke, Advocate for the petitioner.
Mr.S.K.Shelke with Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/09/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the award dated 21/07/1994 by which the Labour Court has allowed Ref. (IDA) No.4/1991 thereby granting reinstatement with continuity and full back wages to the respondent.

2. This Court, while admitting the petition, stayed the direction to pay back wages.

3. I have heard the strenuous submissions of Mr.S.T.Shelke, learned Advocate for petitioner and Mr.A.S.Shelke, learned Advocate for the respondent.

4. The Labour Court has arrived at a finding on facts. It has concluded that the respondent was working in continuous service. Section 25-F and 25-G of the I.D.Act was not complied with. The reference was, therefore, allowed considering that the termination of the respondent from 15/10/1987 amounted to an illegal retrenchment. The petitioner has reinstated the respondent on 18/11/1995 and since then he has been working. It is stated that he may have attained the age of superannuation since he would be 63 years old today.

5. In the above backdrop, I do not find any reason to interfere with the direction of the Labour Court granting reinstatement with continuity in service.

6. The petitioner has strenuously argued that the Labour Court has granted back wages as a matter of course without there being any evidence of unemployment on record. The last drawn wages of the respondent at the time of his termination were Rs.535/- per

month.

7. Learned Advocate for the respondent has strenuously contended that once the termination is held to be illegal, the employer must suffer the effects of its illegal action and hence full back wages have been rightly granted.

8. It appears that the back wages as granted by the Labour Court from the date of termination till the reinstatement of the respondent would be roughly about Rs.52,000/-. This Court had stayed the direction to pay back wages.

9. The Hon'ble Supreme Court in the matter of J.K.Synthetics Ltd., Vs. K.P.Agrawal and another, [(2007) 2 SCC 433] has concluded that unless the employee steps into the witness box to lead evidence on unemployment, his efforts for seeking alternate employment and his continuance in unemployment, back wages should not be mechanically granted. Similarly, in the matter of Nicholas Piramal India Ltd., Vs. Hari Singh 2015(2) CLR 468, the Apex Court concluded that 50% back wages would be an appropriate relief for reducing the rigours of unemployment.

10. Considering the law as above, this petition is partly allowed. The direction of the Labour Court granting reinstatement and continuity in service is sustained. The direction to pay full back wages is modified and the back wages (50%) are quantified at Rs.26,000/- which the petitioner shall pay to the respondent within a period of 12 (twelve) weeks from today.

11. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)