

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2800 of 1995

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division Office, Kotla Raod,
Ahmednagar.

...PETITIONER
(Ori. Respondent)

Versus

Sanjay Laxman Wadage
Age 32 years, Occupation Ex-
employee as Helper
R/o Nirfirke-Galli, Maliwada,
Ahmednagar.

...Respondent
(Ori. Complainant)

...
Mr. M.K.Goyanka, Advocate for Petitioner

...
CORAM: P.R.BORA, J.

Date of reserving the judgment : 09th June, 2016
Date of pronouncing the judgment : 15th June, 2016

...

JUDGMENT :

1) The present petition is preferred against the order dated 23.12.1994 passed by the Industrial Court at Ahmednagar in Revision (ULP) No.36/1994, whereby it has confirmed the order passed by the Labour Court, Ahmednagar in Complaint (ULP) No. 208/1993. The Petitioner thus takes exception to both the aforesaid orders; one passed by the Industrial

Court and the another passed by the Labour Court.

2) The facts which are relevant to decide the present writ petition are thus:

The Respondent was serving as Helper in the Ahmednagar Depot of the Petitioner Corporation. On the charge of absenteeism from duty without taking any leave and prior permission of the authorities, the departmental action was initiated against the respondent. He was held guilty and was dismissed from service by way of punishment. Against the said decision of the disciplinary authority, the respondent filed a Complaint (ULP) No.208/1993 before the Labour Court at Ahmednagar. The complaint so filed by the respondent was contested by the petitioner. However, on assessment of the oral and documentary evidence brought before him, the learned Labour Judge partly allowed the complaint filed by the respondent. The learned Labour Judge set aside the punishment of dismissal and instead directed the stoppage of three yearly increments of the

respondent. The learned Labour Judge consequently directed the reinstatement of the Respondent with back wages after calculating and deducting three annual increments.

Being aggrieved with the order so passed by the Labour Court as above, the petitioner preferred Revision (ULP) No.36/1994 in the Industrial Court at Ahmednagar. The learned Industrial Court, however, did not interfere in the order passed by the Labour Court and accordingly dismissed the Revision Application. Aggrieved by the same, S.T. Corporation has preferred the present petition through its Divisional Controller, Ahmendgar.

3) The Respondent, though duly served, did not enter his appearance in the matter. The record shows that, ad-interim stay to the order of back wages was passed in favour of the petitioner Corporation on 29.06.1995 when the matter was admitted by the Court and Rule was issued.

4) Mr. M.K.Goyanka, the learned Counsel appearing for the petitioner Corporation, at the outset made it clear that, the petitioner is assailing the impugned orders only to the extent of grant of full back wages to the respondent. Learned Counsel submitted that, without assigning any reason and without considering the fact that, the respondent herein i.e. the original complainant had not discharged the burden on him to prove that during the pendency of the complaint before the Labour Court, he was not gainfully employed, the Labour Court has awarded full back wages to the respondent employee. Learned Counsel further submitted that, though it was brought on record that, on at least 13 previous occasions, the respondent employee had remained absent without obtaining any prior permission, the learned Labour Judge ignored the said fact and has erroneously awarded the full back wages to the respondent employee. The learned Counsel further submitted that, the learned Industrial Court also without appreciating the facts on record and

ignoring the legal submissions advanced on behalf of the petitioner Corporation, dismissed the Revision filed by the petitioner Corporation and mechanically confirmed the order passed by the Labour Court. Learned Counsel has placed reliance on the judgment of the Hon'ble Apex Court in **Talwara Co-operative Credit Service Society V. Sushil Kumar, 2008 AIR SCW 6532.**

5) After having considered the submissions made on behalf of the petitioner Corporation and on perusal of both the impugned orders, it apparently appears that, the Courts below have grossly erred in awarding full back wages to the respondent employee. The judgment delivered by the learned Labour Court nowhere reveals that, any such case was pleaded by the respondent employee that during the pendency of the complaint before the Labour Court, he was not gainfully employed and was therefore entitled to full back wages of the entire said period. In such circumstances, the Labour Court

ought not have granted the back wages to the respondent employee of the said period. In so far as the relief of reinstatement is concerned, as noted earlier, the petitioner Corporation has not pressed the said issue and the learned Counsel appearing for the petitioner was fair enough in submitting that the petitioner Corporation is not objecting to the relief of reinstatement granted by the Labour Court and has restricted his argument only to the relief of back wages.

6) In view of the fact that, the respondent employee had failed to discharge the burden on him to prove that, he was not gainfully employed in the relevant period, he was not entitled for the relief of back wages. The Hon'ble Apex Court in Para No.11 of its Judgment in the case of **Talwara Co-operative Credit Service Society Ltd. V. Sushil Kumar, 2008 AIR SCW 6532** observed thus:

“11. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power under Section

11A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment, viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned etc. should be taken into consideration.

For the purpose of grant of back wages; one of the relevant factors would indisputably be as to whether the workman had been able to discharge his burden that he had not been gainfully employed after termination of his service.

Some of the other relevant factors in this behalf have been noticed by this Court in G.M. Haryana Roadways v. Rudhan Singh, [(2005) 5 SCC 591], stating:

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of

back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.”

[See also Correspondent, St. Michael’s T.T.I. v. V.N. Karpaga Mary and Ors. 2008 (6) SCALE 621]

In *U.P.S.R.T.C. Ltd. v. Sarada Prasad Misra and another*, [(2006) 4 SCC 733], this Court held :

“16. From the above cases, it is clear that no precise formula can be adopted nor “cast-iron rule” can be

laid down as to when payment of full back wages should be allowed by the court or tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be rigid or mechanical but flexible and realistic. The court or tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order.”

In *Municipal Council, Sujampur v. Surinder Kumar* [(2006) 5 SCC 173], this Court observed:

“Apart from the aforementioned error of law, in our considered opinion, the Labour Court and consequently the High Court completely misdirected themselves insofar as they failed to take into consideration that relief to be granted in terms of Section 11A of the said Act being discretionary in nature, a Labour Court was required

to consider the facts of each case therefor. Only because relief by way of reinstatement with full back wages would be lawful, it would not mean that the same would be granted automatically.

For the said purpose, the nature of the appointment, the purpose for which such appointment had been made, the duration/tenure of work, the question whether the post was a sanctioned one, being relevant facts, must be taken into consideration.”

7) It appears that, the aforesaid aspect was lost sight of by the learned Industrial Court also. In view of the law laid down by the Hon'ble Apex Court in the judgment referred to herein above, the order passed by the Labour Court so far as it relates to grant of back wages to respondent employee is concerned, deserves to be set aside and quashed. Since this Court had granted stay to the execution of the order in regard to the payment of back wages to the respondent employee, no further orders are required to be passed.

8) For the reasons stated above, the following order:

ORDER

- 1) The Writ Petition is partly allowed.
- 2) The order passed by the Labour Court, Ahmednagar in Complaint (ULP) No.208/1993, so far as it relates to grant of back wages to the respondent, stands quashed and set aside.
- 3) Rule made absolute in above terms.

(P.R.Bora)
Judge

SPR

