

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4060 OF 1995

The State of Maharashtra,
Through the Executive Engineer,
Ahmednagar Irrigation Division,
Aurangabad Road, Ahmednagar

-- PETITIONER

VERSUS

1. Maruti Mahadu Khamkar,
At Post : Takali Kadewalit,
Tal.Shrigonda, Dist.Ahmednagar,

2. The Learned Judge,
Labour Court, Ahmednagar,

3. The Learned Member,
Industrial Court, Ahmednagar.

-- RESPONDENTS

Mr.J.R.Patil h/f Mr.G.B.Rajale, Advocate for the petitioner.

Mr.P.V.Barde h/f Mr.T.K.Prabhakaran, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/09/2016

ORAL JUDGMENT :

1. Respondent Nos. 2 and 3, Labour Court and Industrial Court,
are not necessary parties and hence stand deleted.

2. The petitioner is aggrieved by the judgment dated 25/03/1994
delivered by the Industrial Court, Ahmednagar, by which Revision
(ULP) No.41/1991 filed by the respondent has been allowed. He has

been granted reinstatement with continuity and full back wages.

3. This Court admitted this petition, but refused interim relief to the petitioner.

4. Mr.Patil, learned Advocate for the petitioner has strenuously criticized the impugned judgment. Contention is that the Labour Court had specifically come to a conclusion that the respondent / employee had never worked for 240 days in any calendar year. Though he claimed to have joined as a “Majdoor” on 02/04/1984 and was terminated on 01/04/1988, he could not prove continuous service in any calendar year. The Industrial Court exercising revisional jurisdiction u/s 44 of the MRTU and PULP Act, 1971, could not have overturned findings on facts. Revisional jurisdiction is limited and the Industrial Court cannot adjudicate on a revision petition as if it is dealing with an appeal. He, therefore, submits that the impugned judgment is perverse.

5. He further submits that back wages cannot be granted in a routine manner. The Industrial Court has granted full back wages by concluding in paragraph No.10 that once reinstatement is ordered, back wages have to follow. He, therefore, prays that the impugned

judgment be quashed and set aside.

6. He, however, informs that the respondent was reinstated in service on 08/11/1995 and he continues in employment even today.

7. Mr.Barde, learned Advocate has supported the impugned judgment. Contention is that once the Industrial Court concludes that the judgment of the Labour Court is perverse and likely to cause grave injustice, it has rightly exercised its jurisdiction. He further submits that the respondent was being paid Rs.10/- per day as on the date of termination. Upon his reinstatement on 08/11/1995, after this Court refused interim relief, he was paid Rs.42/- per day. He has settled in employment and probably would superannuate in the near future.

8. I have considered the submissions of the learned Advocates and with their assistance, I have gone through the record and proceedings.

9. It is trite law that the Industrial Court cannot interfere with findings on facts unless the impugned judgment appears to be perverse and erroneous and is likely to cause grave injustice (Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC

477 and Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682).

10. The events that have occurred subsequent to the impugned judgment cannot be ignored. This Court refused interim relief to the petitioner. Having been reinstated in 1995, he is working for the last 21 years. Having settled in employment and considering the fact that he was about 32 years of age in 1994, he must be about 54 years old today and would retire from service in the near future. On this ground and upon considering the fact that the statement of service record filed before the Labour Court was considered by the Industrial Court, I do not find that the impugned judgment deserves to be interfered with to the extent of reinstatement in service.

11. In so far as back wages are concerned, the respondent was out of employment for about 6 years till the Industrial Court delivered the judgment. His last drawn wages were @ Rs.10/- per day. By calculating an average of 25 working days, the back wages would be about Rs.18,000/-.

12. The respondent was reinstated on 08/11/1995 @ about Rs. 42/- per day. From the date of judgment of the Industrial Court till

his reinstatement, he was unemployed for 18 months. Considering his daily wage on the date of reinstatement, this portion of unpaid wages would be about Rs.18,000/-. The total, therefore, would be about Rs.36,000/-.

13. The Hon'ble Supreme Court in the matter of J.K.Synthetics Ltd., Vs. K.P.Agrawal and another, [(2007) 2 SCC 433] and in the matter of Nicholas Piramal India Ltd., Vs. Hari Singh 2015(2) CLR 468, has concluded that the employee must step into the witness box and lead evidence that he is unemployed and continued to be unemployed. In Nicholas Piramal (supra), it was held that 50% of the back wages would be an appropriate monetary relief.

14. Considering the law as above, this petition is partly allowed. I am quantifying the back wages, from the date of termination till the date of actual reinstatement of the respondent, at an amount of Rs.25,000/-. The direction of the Industrial Court to grant full back wages is therefore modified with the direction to the petitioner to pay an amount of Rs.25,000/- as quantified back wages to the petitioner within a period of 12 (twelve) weeks from today, failing which it would attract interest @ 6% from 08/11/1995.

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

16. It be noted that in the event the back wages have already been paid by the petitioner to the respondent, about which the learned Advocates are unaware, there shall be no recovery of the amount.

17. R & P be returned forthwith.

(RAVINDRA V. GHUGE, J.)