

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5139 OF 1995

The Manager,
R.K.Patel and Company
Tobacco Manufacturers,
Amalner, Dist. Jalgaon

PETITIONER

VERSUS

Balu Shriram Patil,
Age-Major, Occu-Service,
R/o Bahadarwadi,
Taluka Amalner, Dist. Jalgaon

RESPONDENT

Mr.V.G.Sakolkar, Advocate for the petitioner.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/08/2016

ORAL JUDGMENT :

1. The petitioner/Management is aggrieved by the award dated 08/12/1994 by which the Labour Court, Jalgaon has allowed Ref. (IDA) No.20/1988. This Court, while admitting the petition, has stayed the direction to pay back wages.

2. I have heard the submissions of Mr.Sakolkar and Mr.Shelke, learned Advocates for the petitioner and the respondent respectively.

3. Mr.Sakolkar has strenuously criticized the impugned award on

the ground that the respondent was unauthorizedly absent from 27/12/1986. He was issued with a notice dated 01/01/1987. Pursuant to the notice, he executed an undertaking-cum-apology dated 21/01/1987 and pleaded guilty. The Management, therefore, was right in dismissing his services. Since he had admitted the charges, no enquiry was necessary.

4. To the extent of back wages, it is strenuously submitted by Mr.Sakolkar that the principle of “no work-no pay” deserves to be applied in this case. The admission of the respondent dis-entitles him to back wages. Awarding back wages would mean that the respondent is being rewarded for remaining unauthorizedly absent. This would sent a wrong message to the other workers and they would commit the same acts when they realize that they can get back wages from the Court.

5. Mr.Shelke submits that the respondent has been working with the petitioner from 1981. He was absent because of breathing problems associated with the manufacturing activity of tobacco. He was working as a “Packer” and was performing the work of packing tobacco in small paper packets. It is universally known that such type of industry has occupational hazards and the employees

invariably suffer from breathing problems and lung infections.

6. He further submits that the respondent is an illiterate person. He affixed his thumb impression on the typed copy of the apology dated 21/01/1987 only with an intention of saving his employment which was the only source of feeding his family. Had the Management pardoned him at that stage, further complications would not have occurred. He was issued with a show cause notice dated 21/03/1987 and followed by one more notice dated 01/04/1987. Subsequently, he was dismissed from service without conducting an enquiry after having worked for about six years.

7. He, therefore, submits that the Labour Court has rightly interfered with the dismissal. Considering that the respondent had promptly raised an industrial dispute and was before the Labour Court in 1988 for challenging his dismissal dated 28/03/1987, it warranted payment of full back wages. He further submits that the total back wages as directed by the Labour Court would amount to Rs.1,56,768/- for a period of 8 years and 1 month, considering the fact that the respondent was reinstated in employment on 30/04/1995.

8. I have considered the submissions of the learned Advocates. There is no dispute with regard to the dates and sequence of events. The respondent was absent from 27/12/1986 and the purported apology is dated 21/01/1987. Even if it is assumed that the respondent is guilty of unauthorized absenteeism, it would be a period of about 3 weeks only.

9. Though the petitioner submits that an apology was tendered on 21/01/1987, things would have ended then and there itself, but for the act of the petitioner of issuing a show cause notice dated 23/07/1987 and thereafter striking the name of the respondent off its roles without conducting an enquiry. The explanation that the respondent had put forth that he was taking treatment from Dr.Chandu Muthe in between 20/12/1986 and 20/01/1987 due to breathing problems having inhaled the tobacco powder while at work, was disregarded by the petitioner.

10. Considering the above, I do not find that the Labour Court has committed any error in granting reinstatement and continuity of service to the respondent. The impugned award to this extent cannot be termed to be perverse or erroneous

11. In so far as the back wages are concerned, the Hon'ble Supreme Court in the matter of Nicholas Piramal India Ltd Vs. Harisingh, [2015(II) CLR 468] has held that grant of back wages to the extent of 50% would be fair and proper in order to reduce the hardships caused to an employee. The total back wages for the period of unemployment of 8 years and 1 month would be about Rs.1,60,000/-.

12. Considering that a Class-IV labourer was working in a tobacco factory and was earning a meager amount as on the date of termination, I am inclined to grant *lump sum* back wages for an amount of Rs.1,00,000/- without interest on the condition that the said amount be paid within 12 (twelve) weeks from today. In the event of failure of the petitioner in paying the said amount, it would carry simple interest @ 6% p.a. from the date of the award 08/12/1994. I am partly allowing this petition by modifying the direction of back wages as above.

13. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)