

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2184 OF 1996

1. Chief Executive Officer,
Zilla Parishad, Dhule.

2. Executive Engineer,
Zilla Parishad, Dhule.

..Petitioners

Versus

Mahendra Dhannalal Jain
At post Kusumbe, Taluka
and District Dhule.

..Respondent

...
Advocate for Petitioners : Shri N.N.Desale
h/f Shri R.B.Raghuwanshi.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 22, 2016

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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment and order dated 29.1.1992, by which, Complaint (ULP) No.67 of 1991 has been allowed and the petitioner is directed to reinstate the respondent with continuity and full backwages till the date of his reinstatement. The petitioner is also aggrieved by the judgment of the Industrial Court dated 3.2.1994, by which, Revision (ULP) No. 83 of 1992 filed by the petitioner has been dismissed.

2. This Court has admitted the matter on 5.12.1994 and has

specifically refused interim relief. Hearing of the petition was expedited.

3. Shri Desale, learned Advocate for the petitioners has strenuously criticized the impugned judgment. Contention is that a back door entry by the respondent led to his termination. He was illegally appointed. Though he has worked as a Mustering Assistant from 15.11.1983 till 12.10.1987, he was, thereafter, appointed as an Oil Man and worked till 21.12.1990. He used to occasionally perform the work as a Typist.

4. Since the respondent was not appointed by following the due procedure, he was orally terminated w.e.f.21.12.1990. The judgment of the Honourable Supreme Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1], is squarely applicable to this case. The Labour Court has erroneously allowed the complaint and granted reinstatement with continuity and full backwages.

5. The Industrial Court has failed to consider the perversity in the judgment of the Labour Court and has dismissed the Revision Petition mechanically. There was no evidence before the Labour Court as regards the unemployment of the respondent. He had not pleaded that he was not gainfully employed after his termination. Full

backwages could not have been granted.

6. None appears for the respondent.

7. I find from the reasons and conclusions of the Labour Court, based on the oral and documentary evidence that the appointment orders were placed on record below Exhibit U-10, 11, 13 and 14. The respondent was granted the scale of Rs. 205-5-250- 7-285-10-305-EB-10-355. He was orally terminated on 21.12.1990. He had completed 240 days in each calendar year. Provident Fund slips below Exhibits U-15 and 16 were placed on record.

8. As such, the Labour Court had arrived at a finding on facts and had concluded that the respondent had worked for more than seven years in the employment of the petitioner. On this count, since Section 25-F was not complied with and an oral order of termination, which is non-existent in the eyes of law, was the cause of action, I do not find that the conclusions of the Labour Court and the Industrial Court to this extent could be termed as perverse or erroneous.

9. The Honourable Supreme Court, on the issue of backwages, has observed in paragraph Nos.18 and 19 in it's judgment in the case of J.K.Synthetics Ltd vs. K.P.Agrawal and another [(2007) 2 SCC 433], that an employee, in order to claim backwages, must step into the

witness box and lead evidence as regards the efforts taken by him to seek alternate employment and that he was continuously unemployed after his termination. It does not appear from the evidence in this case that the respondent claimed to be unemployed ever since he was terminated.

10. The Honourable Supreme Court in the matter of Nicholas Piramal India Ltd. Vs. Harising [2015 II CLR 468], has concluded that 50% backwages would be appropriate to reduce the rigors of the unemployment and litigation.

11. I am, therefore, of the view that the respondent can be held entitled only to the extent of 50% backwages from the date of his termination till the date of his reinstatement. However, there is a possibility that the petitioner may have paid the backwages to the respondent since this Court refused interim relief to the petitioner by order dated 5.12.1994.

12. In the light of the above, this petition is partly allowed. The impugned judgments of the Labour and Industrial Courts are modified to the extent of reducing the backwages from 100% to 50% from the date of termination till the date of reinstatement. Needless to state, considering that this Court refused interim relief to the petitioners, if the respondent has been paid his entire backwages, there shall be

no recovery from him, considering the conclusions in this judgment. In the event, the backwages have not been paid, the respondent would be entitled for 50% backwages as held herein above, to be paid within twelve weeks.

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

(RAVINDRA V. GHUGE, J.)

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