

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

WRIT PETITION NO.1410 OF 1998

Mahatma Phule Krishi Vidyapeeth.
At Post and Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Tulshiram Haribhau Magar,
Age Major,
R/o Mulanagar, Taluka Rahuri,
District Ahmednagar.
- 2 Judge, Labour Court,
Ahmednagar.
- 3 Member, Industrial Court,
Ahmednagar.

...RESPONDENTS

**WITH
WRIT PETITION NO. 4193 OF 2016**

Tulsiram Haribhau Magar,
Age : 68 years, Occupation : Nil,
R/o Mula Nagar, Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

Mahatma Phule Krishi Vidyapeeth,
At Post Vidyapeeth, Taluka Rahuri,
District Ahmednagar.
Through its Registrar.

...RESPONDENT

...
Advocate for the University : Shri Pradeep Shahane.
Advocate for the Employee : Shri Barde Parag Vijay.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th November, 2016

Oral Judgment :

1 In Writ Petition No.1410/1998, Respondent Nos.2 and 3 being formal parties, stand deleted.

2 Rule in Writ Petition No.4193/2016. Rule made returnable forthwith and heard finally by the consent of the parties along with Writ Petition No.1410/1998.

3 While considering Writ Petition No.4193/2016, the learned Advocates for the respective sides brought it to the notice of this Court that the earlier Writ Petition No.1410/1998 filed by the Respondent/ University against the same Petitioner/ Employee has been admitted by this Court on 15.10.1999 and interim relief was refused on the ground that the Employee has been reinstated in service as a Majdoor. It was brought to the notice of this Court by the University in the form of the statement recorded on 15.10.1999 that the Employee has been reinstated

in service as Majdoor in 1992. So also, his back wages were paid.

4 Considering the above, by the consent of the parties and since the earlier Writ Petition was pending final hearing, I have taken up both these petitions together.

5 For the sake of brevity and clarity, the Employee in these two petitions is being referred to as “the Workman” and the Respondent, in the second petition who is the Petitioner in the first petition, is being referred to as “the University”.

6 Writ Petition No.1410/1998 has arisen out of the judgment of the Labour Court dated 10.08.1992 by which the Labour Court allowed Complaint (ULP) No.56/1985 filed by the Workman and by setting aside his termination dated 09.08.1985, has granted reinstatement with continuity of service and full back wages w.e.f. 09.08.1985. By the impugned judgment of the Industrial Court dated 22.07.1997, Revision (ULP) No.79/1992 filed by the University has been dismissed.

7 This Court, by order dated 15.10.1999, has admitted the petition and has held that the back wages payable to the Workman shall be subject to the result of this petition. This order was passed after

recording the statement of the University that the Workman was reinstated as Majdoor in 1992. The order dated 15.10.1999 reads as under:-

"Heard.

Leave to amend.

Rule. Expedited.

It is clarified that the back wages granted by the Labour Court in the impugned judgment shall be treated as back wages for the post of Mazdoor to which the Original Complainant was reverted to, during the pendency of this petition. Interim order stands vacated and it is clarified that the payment of back wages will be subject to the outcome of this Writ Petition. Mr.Joshi, learned counsel also makes a statement that the original Complainant has been reinstated in service as Mazdoor in 1992."

8 It appears from the impugned judgment of the Labour Court dated 10.08.1992 and the judgment of the Industrial Court dated 22.07.1997 that the Workman was terminated by the University by attaching a stigma of unauthorized absenteeism. It is recorded by the Courts below that the University has taken a specific stand that though the Workman was terminated for the misconduct of unauthorized absenteeism, no departmental enquiry was conducted. It appears from the judgment of the Labour Court that the University has not pressed a request to conduct a fresh enquiry.

9 It further appears from the judgment of the Labour Court that

the University had taken a stand that the Workman had submitted false information regarding his seniority and based on such a fraudulent act/misrepresentation, he had acquired an order of appointment as a Shepherd. His said appointment was on the Sheep Breeding Project. It was in this backdrop that the order dated 08.08.1985 appointing the Workman as a Shepherd (Meshpal), was withdrawn by the University and he was terminated on 17.08.1985. A specific stand was taken that the Workman himself has abandoned duties from 17.08.1985.

10 Ordinarily, this issue could have been gone into, but for the fact that the said issue is of 17.08.1985 and which is practically 31 years ago. Considering the second Writ Petition No.4193/2016 and the cause of action originating from the said proceedings and more so in the light of the fact that the University has paid the back wages to the Workman from the date of his termination dated 17.08.1985 till his reinstatement in 1992, I am disposing of Writ Petition No.1410/1998 since I am inclined to grant compensation to the Workman by taking into account the fact that the charge of unauthorized absenteeism thereby, leading to abandonment of service, was not proved by the University before the Labour Court. Writ Petition No.1410/1998, therefore, stands disposed of in terms of the order which would follow in this judgment. Rule is discharged.

11 In Writ Petition No.4193/2016, the Workman had preferred Complaint (ULP) No.32/2002 before the Labour Court challenging his retrenchment dated 01.04.2001. By judgment dated 05.02.2010, the Labour Court allowed the complaint and considering the fact that the Workman had attained the age of superannuation taking into account his date of birth as 06.08.1948, granted retiral benefits by declining back wages. This was made effective from the date of his purported retirement.

12 The University challenged the judgment of the Labour Court in Revision (ULP) No.27/2010. By the impugned judgment dated 27.11.2015, the Industrial Court allowed the revision petition and directed the University to pay the shortfall in retrenchment compensation.

13 It is undisputed that the date of retrenchment of the Workman is 01.04.2001 and he was paid retrenchment compensation of Rs.11,392/- in 2001. The impugned judgment of the Industrial Court by which the compensation of Rs.16,728/- was granted, which is shortfall in compensation and should have been paid in 2001, has not been challenged by the University.

14 Shri Shahane, learned Advocate for the University, has strenuously relied upon the affidavit in reply dated 10.11.2016 filed

through the Registrar of the University contending that the amount of Rs.16,728/-, which is shortfall in retrenchment compensation, has been deposited before the Industrial Court on 14.07.2016. He further submits that as there was surplus manpower, the circular was issued on 16.01.2001 to reduce the manpower. An option to accept Voluntary Retirement Scheme (VRS) was made available to all surplus daily rated employees and several others. About 369 employees opted for VRS and on accepting the wages, relinquished employment. Several others who did not opt for VRS, were retrenched on 01.04.2001 which includes the Workman herein.

15 Shri Shahane places reliance upon the judgment of the Honourable Supreme Court in the matter of the same University, namely, *Mahatma Phule Agricultural University vs. Nashik Zilla Sheti Kamgar Union*, **2001 (III) CLR 4**, to contend that the University had bonafide calculated the retrenchment compensation in 2001. It was only by the said judgment of the Honourable Supreme Court dated 24.07.2001 which required the University to recalculate the retrenchment compensation which it had paid on 01.04.2001, as the University was made aware about the shortfall in retrenchment compensation.

16 He strenuously submits that the Honourable Supreme Court

did not direct the reinstatement of such retrenched employees on the ground of shortfall in computing the retrenchment compensation. He submits that the wages under the directions of the Honourable Supreme Court in the judgment in Mahatma Phule Agricultural University (supra), for an amount of Rs.1,30,503/- has already been paid and the back wages for the earlier termination dated 17.08.1985 has also been paid.

17 Shri Barde, learned Advocate for the Workman, strenuously submits that the law is that if Section 25-F of the Industrial Disputes Act, 1947 is not complied with, it is an incurable infirmity and no employer can be permitted to cure such infirmity.

18 In my view, the law on retrenchment compensation is well settled. It is crystallized that all three conditions under Section 25-F of the Industrial Disputes Act, 1947 are axiomatic and are required to be complied with scrupulously. However, this case has a peculiar background.

19 The University has calculated the retrenchment compensation as on 01.04.2001 and has paid the said amount. It is only after the Honourable Supreme Court delivered its judgment in 2001 in Mahatma Phule Agricultural University (supra) that the University was required to recalculate the retrenchment compensation. The fact that the University

has not challenged the Industrial Court's judgment and has deposited the compensation amount of Rs.16,728/-, which is strictly calculated in the light of the observations of the Honourable Supreme Court in the aforesaid judgment, leads to a conclusion that the said amount of Rs.16,728/- should have been paid to the Workman in 2001. The same was not paid and therefore, the Workman had preferred Complaint (ULP) No.32/2002 before the Labour Court. The Labour Court had allowed the complaint on the ground of insufficiency in compensation and since the Workman had attained the age of superannuation prior to the judgment of the Labour Court, it granted continuity of employment on notional basis till the date of retirement so as to extend him the retiral benefits.

20 In the peculiar facts as recorded above, it would be far fetched to conclude that the University has intentionally or deliberately paid lesser retrenchment compensation. Since the temporary employees being entitled to 1/30th wages as were paid to the permanent employees, was the formula that was deduced by the Honourable Supreme Court, that the University was required to recalculate the compensation amount. Had the said compensation been paid promptly before the Workman lodged his ULP complaint in 2002, probably this litigation would not have been dragged this far. As a consequence, the Workman was in litigation even post retirement.

21 Taking into account the totality of the facts and circumstances as recorded above, I deem it proper to partly allow this petition by quantifying compensation to be paid by the University to the Workman for two reasons. Firstly, the amount of Rs.16,728/- should have been paid in 2001 which is 15 years ago and secondly, as a consequence of having not paid the said amount, that the Workman had to resort to litigation. It also needs to be noted that this is the second round of litigation of the said Workman upto this Court.

22 Had the amount of Rs.16,728/-, which has been deposited by the University on 14.07.2016, been deposited before the Industrial Court at Ahmednagar in 2001, it would have fetched interest multi fold times in the past 15 years. I am, therefore, rounding of the said compensation to Rs.50,000/- (Rupees Fifty Thousand) taking into account the interest component for the last 15 years. So also, since the Workman was dragged into litigation and has been litigating for the last 15 years, I deem it proper to award compensation of Rs.50,000/- (Rupees Fifty Thousand) for the rigours of litigation suffered by him.

23 In the light of the above, this Writ Petition No.4193/2016 is partly allowed. The impugned judgments of the Industrial Court and the

Labour Court are modified by directing the University to pay an amount of Rs.1 lac to the Workman within a period of TWELVE (12) WEEKS from today by deducting the amount deposited before the Industrial Court. The amount deposited before the Industrial Court can be withdrawn by the Workman by producing tangible identity proof to the satisfaction of the Additional Registrar of the Industrial Court. Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)