

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8280 OF 2016

Vinod S/o Jugraj Mutha,
Age-45 years, Occu-Business,
Proprietor of R.Mutha Rice House,
Old Mondha, Aurangabad

-- PETITIONER

VERSUS

Satish S/o Babulal Khandelwal,
Age-48 years, Occu-Service,
R/o House No.110,
Babai Khorhale Niwas,
Shivshankar Colony,
Aurangabad

-- RESPONDENT

Mr.D.S.Bharuka, Advocate for the petitioner.
Mr.R.K.Khandelwal, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/12/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The issue raised in this petition is as to whether a direction to reinstate the complainant in service at an interim stage is sustainable or not.

3. I have heard the learned Advocates for the respective sides.

4. The respondent/employee who claims to have joined the shop in the year 2000, filed Complaint (ULP) No.75/2013 before the Labour Court alleging oral termination from 26/07/2012. The petitioner/Management submits that though the respondent was working from 2000 till 25/07/2012 and was drawing a salary of Rs.7,500/- per month, he had taken an advance of Rs.30,000/- in 2010 and he did not account for the entire amount till 25/07/2012. He himself left employment voluntarily.

5. It appears from the record that the respondent had approached the office of the Deputy Commissioner of Labour. The petitioner/Management appeared in the said proceedings. Thereafter, the respondent preferred a ULP complaint and expressed his desire to resume duties keeping in view that the petitioner took a stand that he was never terminated and he himself stopped reporting for duties.

6. The petitioner has taken a stand that fresh hands have been engaged in place of the respondent and therefore the respondent cannot be permitted to resume duties. It is in this backdrop that the Labour Court has directed the respondent/workman to resume

duties with the petitioner and hence this petition by the petitioner.

7. It is strenuously submitted by Mr.Bharuka that unless the issue of oral termination is not proved before the Labour Court finally in the complaint, he cannot be permitted to resume duties. So also, a new employee has been engaged in his place.

8. The Labour Court has found the defence taken by the petitioner to be fallacious since the respondent has been trying to resume duties even before the Deputy Commissioner, Labour in 2012 itself. As the petitioner was not inclined to permit him to resume duties, he preferred his ULP complaint before the Labour Court on 11/02/2013 and prayed for a direction to be permitted to resume duties.

9. I have also find that the petitioner has not stated the name of the employee who has been engaged in place of the respondent who had worked for 12 years and had attained the deemed status of a permanent employee. In the matter of abandonment of service, unless the charge of abandonment is not proved, there cannot be a presumption of abandonment in the light of the view taken by the Hon'ble Apex Court in the matter of Novartis India Ltd., Vs. State of

West Bengal and others, (2009)3 SCC 124 = AIR 2008 SC (Suppl) 836]. Moreover, the respondent had approached the Labour Commissioner within a few weeks of the purported oral termination. Yet the petitioner has taken a stand that he cannot be allowed to resume duties. Same stand is taken before the Labour Court. In this petition, the stand taken is that unless the complaint is decided, the respondent cannot be permitted to resume duties.

10. Prima facie, the stand taken by the Management is unbelievable. Name of a purported new employee is suppressed from the Court in as much as that would amount to violation of Section 25-G of the I.D.Act as a new person is said to be recruited in place of the respondent who has worked for 12 years.

11. Nevertheless, there cannot be a direction of reinstatement in service at an interim stage. In my view, ends of justice would be met by directing the petitioner to pay 15 days wages to the respondent as an interim arrangement during the pendency of the complaint and till its decision so as to balance the equities and to avoid irreparable harm, serious prejudice and manifest inconvenience to the respondent. The said amount of 15 days wages, which would be about Rs.4,000/- for each month shall be deposited before the

Labour Court by the petitioner from February 2014 (date of the order of the Labour Court) and shall be regularly paid to the respondent henceforth by depositing the amount in the Labour Court on or before the 10th day of each month till decision of the complaint.

12. In the event, the petitioner desires to permit the respondent to resume duties in the light of the stand taken that he is not terminated, it would be at liberty to do so, and in which case the respondent would be entitled for the full wages @ 7,500/- p.m.

13. This petition is, therefore, partly allowed in terms of paragraph 11 and the impugned order of the Labour Court dated 18/02/2014 and the judgment of the Industrial Court dated 23/11/2015 shall stand modified accordingly. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)