

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

WRIT PETITION NO. 1881 OF 1998

The State of Maharashtra.
Through the Executive Engineer,
P.W.D., Dhule.

...PETITIONER

-VERSUS-

Hiralal Eknath Randhir,
C/o Suresh Raghunath Bhamare,
Dhanai Punai Colony, Dhule.

...RESPONDENT

...

AGP for Petitioner : Shri S.B.Joshi.
Advocate for Respondent : Shri S P Brahme.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th October, 2016

Oral Judgment :

1 The Petitioner is aggrieved by the award dated 20.06.1994 delivered by the Labour Court by which Reference (IDA) No.6/1993 has been allowed and the Respondent was granted reinstatement with continuity in service from 28.02.1986 along with full back wages.

2 This Court, while admitting the petition on 29.04.1998, granted interim relief in terms of prayer clause (C) by virtue of which the impugned award was stayed. However, by further order dated 11.08.1998,

this Court recorded the fact that the Respondent was reinstated on 15.04.1995 and therefore, modified the interim order and restricted the stay on the award only to the extent of back wages.

3 Though the learned AGP has strenuously criticized the impugned award and has taken me through the grounds set out below paragraph 5 (I) to (IX), I do not deem it proper to cause any interference in the impugned award to the extent of reinstatement and continuity in service since the Respondent has already been reinstated on 15.04.1995 and he has worked for more than 21 years as on date and this Court by its order dated 11.08.1998 had modified the interim relief.

4 The learned AGP submits that 100% back wages could not have been granted. Shri Brahme has strenuously supported the grant of full back wages stating that once the termination is held to be bad in law, payment of back wages is a normal relief. He submits that if an employee is unemployed on account of the illegal act of the Employer, he cannot be deprived of back wages and the Employer cannot be granted any premium to take advantage of its own wrong. He, therefore, prays that this Court should not interfere in the grant of full back wages.

5 I am unable to accept the submissions of Shri Brahme for the

reason that the Honourable Supreme Court in the matter of *J.K. Synthetics Limited vs. K.P.Agrawal*, **2007(2) SCC 433**, has concluded that there has been a shift in the law on back wages. The back wages cannot be granted mechanically. It is observed in paragraphs 18 and 19 of the judgment that the employee must step into the witness box and must lead evidence that he was not employed after termination, he has attempted to secure employment and since he failed to get any employment, he was not gainfully employed. It also needs to be noted that though the Respondent was terminated on 28.02.1986, an industrial dispute was raised after eight years in 1993.

6 Since the Respondent has been reinstated in service and has been working for more than 20 years post reinstatement and as he has been granted continuity, he would be qualified for retiral benefits. In this backdrop, I deem it proper to place reliance upon the judgment of the Honourable Supreme Court in the matter of *Gauri Shankar vs. State of Rajasthan*, **2015 (2) CLR 497** wherein it has been concluded that grant of back wages in between 25% to 50% would be an appropriate relief for reducing the rigours of litigation.

7 Considering the fact that the Respondent cannot be given advantage for the delay that he has caused, I am inclined to grant him

25% back wages from January, 1993 till his reinstatement on 15.04.1995. He shall be deprived of back wages from the date of his termination till December, 1992.

8 In the light of the above, this Writ Petition is partly allowed. The impugned award is sustained to the extent of reinstatement and continuity in service and is modified only to the extent of back wages. Consequentially, the Petitioner shall pay to the Respondent an amount of 25% of the last drawn wages towards back wages for the period of January, 1993 till 15.04.1995, within TWELVE WEEKS from today, failing which the Respondent would be entitled for simple interest at the rate of 6% per annum on the said 25% amount from the date of the award till it's actual payment. Such amount of interest shall be recovered from the salaries of the Executive Engineer, Public Works Division, Dhule. Needless to state, the interest, if payable, would not be paid from the State exchequer.

9 Rule is made partly absolute in the above terms.