

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5250 OF 1995
WITH
CIVIL APPLICATION STAMP NO.22249 OF 2016

The Managing Director

PETITIONER

VERSUS

Madhukar Goroba Birajdar

RESPONDENT

Mr.H.B.Nandgavale h/f Mr.V.G.Sakolkar, Advocate for the petitioner.
Mr.C.V.Thombre, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/07/2016

PER COURT :

1. The petitioner/Sugar Factory is aggrieved by the judgment dated 29/12/1989 delivered by the Labour Court in Complaint (ULP) No.77/1998 by which the complaint filed by the respondent was allowed and he was granted reinstatement with continuity and full back wages. The petitioner is also aggrieved by the judgment of the Industrial Court dated 18/08/1995 by which Revision (ULP) No.1/1990 filed by the petitioner has been dismissed.

2. The respondent is said to have passed away on 17/07/1999. Therefore, the CA Stamp No.22249/2016 filed by the applicant widow is now allowed. The applicant shall be brought on record in this

petition forthwith. Delay caused in filing of the application is condoned.

3. I have heard the learned Advocates for the respective sides at length. A short issue is raised for the consideration of this Court. The deceased respondent who joined the petitioner as a Field Officer on 20/01/1986, was dismissed by order dated 05/12/1987 w.e.f. 21/11/1987. It was thus a termination with retrospective effect. This Court in the matter of Aasaram Raibhah Dhage Vs. Executive Engineer, 1989 (2) CLR 331 has concluded that termination with retrospective effect is unforseen in law and cannot be cured. As such, the Labour Court as well as the Industrial Court rightly allowed the complaint and the direction of reinstatement was sustained.

4. It is stated that on account of the order of this Court dated 13/11/1995, the petitioner was directed to reinstate the respondent within 2 weeks. Back wages as granted by the Labour Court, were stayed. Learned Advocate for the petitioner submits that the deceased respondent joined duties in November 1995 pursuant to the orders of this Court and passed away on 17/11/1999. Mr.Thombre, learned Advocate submits that though the respondent joined duties,

he was not paid his wages. Presently, a Liquidator has been appointed.

5. In the light of the above, this petition, being devoid of merit to the extent of grant of reinstatement, is partly dismissed.

6. In so far as the back wages and unpaid wages are concerned, the Hon'ble Supreme Court in the matter of Nicholas Piramal India Ltd. Vs. Harisingh, 2015(2) CLR 468 and Gauri Shanker Vs. State of Rajasthan, 2015 (2) CLR 497 has concluded that back wages in between 25% to 50% would be a fair order so as to reduce the rigours and hardships suffered by the employee.

7. Considering the above, I am inclined to partly allow this petition to the extent of the back wages by directing the petitioner to pay 50% back wages to the widow of the deceased respondent within a period of 12 weeks from today, failing which the said amount shall carry interest @ 6% till actually paid. The back wages shall be computed from 21/11/1987 till November 1995. In so far as the unpaid wages from November 1995 till the death of the complainant on 17/11/1999 are concerned, the petitioner shall pay the said amount within 12 weeks to the widow of the deceased failing which

the said amount shall carry interest @ 6% from the date of this order till its actual payment

8. It is informed that a Liquidator has been appointed on the petitioner factory. This judgment shall, therefore, be implemented by such legal entity which is presently managing the affairs of the petitioner/factory as directed above.

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

(RAVINDRA V. GHUGE, J.)