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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.356/1997

Osmanabad Taluka Shetkari Sahakari
Kharedi Vikri Sangh Ltd.
Through its Manager,
Main Road, Osmanabad.

...Petitioner...

Versus

- 1 Namdeo S/o Sambhaji Thorat
 Age 56 years, Occ : Agriculture,
 and business also formerly
 Sarpanch of Village Daudpur,
 Taluka Osmanabad, Dist. Osmanabad.
- 2 Judge,
 Second Labour Court,
 Solapur.
- 3 Deputy Commissioner of Labour
 Malajipura, Aurangabad.
- 4 The State of Maharashtra.
 ...Respondents...

.....

Shri S.V. Natu, Advocate for petitioner.

Shri P.L. Shahane, Advocate for respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.03.2016

ORAL JUDGMENT :

1] Respondent nos.2, 3 and 4 are formal parties. The petitioner shall, therefore, delete respondent nos.2, 3 and 4 forthwith.

2] This petition was admitted by this Court by order dated 3.7.1998.

3] The petitioner is aggrieved by the judgment and award dated 27.8.1996 delivered by the Labour Court by which Reference (IDA) No.2/1984 was allowed and the respondent was granted reinstatement with continuity and full back wages.

4] Shri Natu, learned Advocate for the petitioner, has strenuously criticized the impugned judgment. He has canvassed a host of factors. Shri Shahane, learned Advocate for the sole respondent, has supported the impugned judgment.

5] Though I have considered the lengthy submissions of the learned Advocates, I am not required to advert to their entire submissions for the reason that the respondent has retired on 16.4.1999 after attaining the age of superannuation.

6] As such the following dates and events are relevant :-

[a] The respondent claims to have worked from 1.11.1969 to 30.6.1982 over a period of about 6 years and 6 months.

[b] He was terminated on 1.7.1982 on account of certain charges leveled upon him.

[c] The respondent raised an industrial dispute and which was referred to the Labour Court as Reference (IDA) No.2/1982.

[d] No enquiry was conducted and the charges were not proved against the respondent, which led the Labour Court to answer the reference in the affirmative.

[e] By the impugned judgment and award, the reference was allowed on 27.8.1996 and the respondent was granted reinstatement with continuity of service and full back wages.

[f] Since this Court did not grant a stay to the order of reinstatement, the petitioner reinstated the respondent on 1.7.1998 and the back wages were stayed by this Court.

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[g] He retired from service on 16.4.1999.

[h] The respondent actually worked for 11 years and 4 months.

[i] By virtue of the impugned award, since continuity has been granted, he is presumed to have worked from 1.11.1969 till 16.4.1999 i.e. about 30 years.

[j] His wages as on 1.7.1982 when he was terminated were at the rate of Rs.400/- per month.

[k] His wages on the date of retirement were approximately at the rate of Rs.3,000/- per month.

[l] Gratuity for a period of 30 years has not been paid.

[m] There are some unpaid wages for the period from 1.7.1998 till 16.4.1999.

7] Considering the above facts and the subsequent events, coupled with the fact that the petitioner cannot wriggle out of the position of having terminated the respondent on grounds of mis-conduct without conducting any enquiry, I do not find any reason to interference

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with the findings of the Labour Court to the extent of reinstatement with continuity in service.

8] Shri Shahane, learned Advocate for the respondent, has strenuously attempted to support the impugned order to the extent of grant of full back wages. Shri Natu submits that there was no evidence before the Labour Court with regard to unemployment of the respondent. He submits on instructions that the respondent had entered politics after his termination and was also elected as the Sarpanch of a village.

9] Be that as it may, the learned Apex Court in the case of *Nicholas Piramal India Limited v/s Hari Singh*, (2015 II CLR 468) has concluded that 50% wages in order to reduce the hardship of an employee would be a reasonable amount of back wages.

10] So also I find from the impugned award that the respondent had not put forth any evidence with regard to his continued unemployment, any attempt to seek employment and failure to seek alternate employment despite best efforts.

11] The back wages of the respondent upon being calculated by taking into account his last drawn salary

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at the rate of Rs.400/- per month as on 1.7.1982 would be somewhere around Rs.70,000/- till his reinstatement on 1.7.1998. Nevertheless, his wages must have got increased in 1990 till he is superannuated on 16.4.1999. His last drawn wages at the rate of about Rs.3,000/- per month indicates the rise in wages.

12] In the light of the above, I am inclined to grant the respondent an amount of Rs.75,000/- towards 50% back wages and unpaid wages. Since gratuity has not been paid to him, considering his last drawn wages at the rate of Rs.3,000/- p.m., his gratuity for the period of 30 years from 1.11.1969 to 16.4.1999 would be about Rs.52,000/-. As such, I find that a total compensation package towards 50% back wages, unpaid wages and gratuity, of an amount of Rs.1,30,000/- would be reasonable.

13] In the light of the above, this petition is disposed of with a direction to the petitioner to pay an amount of Rs.1,30,000/- to the respondent within a period of eight weeks from today, failing which, the said amount shall carry simple interest at the rate of 3% from the date of his superannuation, which is 16.5.1999 till

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actual payment.

14] The petition is partly allowed. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)