

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

WRIT PETITION NO. 687 OF 1997

1 The State of Maharashtra.

2 The Warden,
Government Boys Hostel,
Nilanga, District Latur.

...PETITIONER

-VERSUS-

Shri Krishnnath Vithalrao Darode,
Age : 29 years, Occupation : Nil,
R/o Renapur, Tq & Dist.Latur.

...RESPONDENT

...
AGP for Petitioner : Shri P.N.Kutti.
Advocate for Respondent : Shri R S Deshmukh.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th October, 2016

Oral Judgment :

1 The Petitioner is aggrieved by the judgment of the Industrial Court dated 07.08.1996 by which Revision (ULP) No.24/1989 filed by the Petitioner has been dismissed.

2 This petition was admitted on 22.09.1998 by this Court and interim relief was refused to the Petitioner.

3 I have heard the learned AGP on behalf of the Petitioner and Shri Deshmukh, learned Advocate on behalf of the Respondent/Employee.

4 The Respondent was before the Labour Court in Complaint (ULP) No.44/1987 alleging that he has been disengaged w.e.f. 30.04.1987 by the written order dated 28.05.1987. He was working as a Clerk from November, 1985. It is categorically informed that the Respondent has been in service ever since he has been reinstated and is presently in employment for almost two decades. After he was disengaged by order dated 28.05.1987 w.e.f. 30.04.1987, he had approached the Labour Court. By judgment dated 22.06.1989, the Respondent was granted reinstatement with continuity of service and full back wages. Being aggrieved by the said judgment, the Petitioner had approached the Industrial Court in the revision petition which was dismissed by the impugned judgment dated 07.08.1996.

5 The decisive issue in this matter is that the Respondent has suffered termination with retrospective effect. By a written order dated 28.05.1987, he was discontinued from 30.04.1987. The learned Division Bench of this Court, in the matter of *Assaram Raibhah Dhage vs. Executive*

Engineer, Sub Divisional, Mula, **1988 (4) Bom. C.R. 158 : 1987 (2) CLR 231**, has concluded that termination with retrospective effect is unforeseen in law. This Court expressed its astonishment and concluded that even if a person is a temporary / daily wage or permanent, there cannot be termination with retrospective effect. Paragraphs 1 to 3 of the said judgment reads as under:-

- “(1) *The services of an employee, be he permanent or temporary, cannot be terminated with retrospective effect. Such is the ratio of this judgment.*
- (2) *On June 7, 1980 the petitioner, a project displaced person, was appointed as a Mustering Assistant in the Work Charge Establishment at a monthly salary of Rs.200/-. Thereafter he worked continuously without break in service till March, 1986, when by a letter of termination dated March 11, 1986 his services were retrospectively terminated with effect from March 1, 1986. Hence this writ petition.*
- (3) *The petitioner's learned counsel Miss Purohit is perfectly justified in making a grievance that it is unthinkable that an employee's services can be terminated with retrospective effect, as done in the present case. We join learned Counsel in her astonishment. For that matter, one of the conditions in the letter of appointment is that if the petitioner desired to resign he was liable to pay one month's salary or give one month's notice. It is therefore, ironical that on the other hand, the petitioner's services were terminated with retrospective effect.”*

6 The learned AGP has agitated the issue of grant of full back wages by the Labour Court. Shri Deshmukh has strenuously supported the impugned judgment and has submitted that once the termination is held

to be illegal and unsustainable, the effect of unlawful termination can be cured by grant of full back wages. Depriving the Respondent of back wages would amount to giving the Employer a premium on an unlawful termination.

7 The Honourable Supreme Court in the matter of *J.K. Synthetics Limited vs. K.P.Agrawal*, 2007(2) SCC 433, has observed in paragraphs 18 and 19 that an employee has to step into the witness box and lead evidence that he was not in gainful employment after termination, he attempted to obtain alternate employment and despite his best efforts, he could not secure any employment. In the instant case, I find from the judgment of the Labour Court that there is no reference to these aspects. So also, the Honourable Supreme Court, in the matter of *Nicholas Piramal India Limited v/s Hari Singh*, 2015 (2) CLR 468, has concluded that 50% back wages would amount to an appropriate relief to an employee for having suffered the rigours of litigation.

8 In the light of the above, this Writ Petition is partly allowed only to the extent of reducing the back wages of the Respondent from 100% to 50% from the date of his termination till the date of his reinstatement in service.

9 In the event, on account of refusal of interim relief by this Court if the Petitioner has already paid back wages to the Respondent, this order shall not affect the said payment and there shall be no recovery of the amount already paid.

10 Rule is made partly absolute in the above terms.

11 Before parting with this matter, I deem it proper to express my displeasure to the language used by the learned Presiding Officer, Labour Court, Latur in paragraph 6 wherein it is observed that “*I would say that this judgment of our High Court has not shut up the mouth of the workers to avail their individual remedies.*” It is expected from a Judicial Officer that the language used in the judgment should maintain the respect and dignity of the judiciary. Rough language should never be used.