

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3290 OF 2016

Dr. Babasaheb Ambedkar Sahakari
Sakhar Karkhana Limited, Kesegaon,
Tq. and Dist. Osmanabad, through
it's Managing Director.

..Petitioner

Versus

Prasad Abhimanyu Pangare,
Age 40 years, Occ. Service,
R/o Upala (Makadache),
Tq. and Dist. Osmanabad.

..Respondent

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Advocate for Petitioner : Shri Salunke M.V.
h/f Shri Salunke V.D.

Advocate for Respondent : Shri Bhosale S.B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 10, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the order dated 13.3.2014,

delivered by the Industrial Court, Latur by which, Revision (ULP) No.30 of 2012, filed by the petitioner was dismissed. The petitioner is also aggrieved by the judgment dated 4.5.2012, delivered by the Labour Court, by which, Complaint (ULP) No.227 of 2004 has been allowed and the respondent is granted reinstatement with continuity and full backwages and the order dated 5.8.2011, vide amended prayer clause C-1.

5. I have considered the submissions of the learned Advocates.

6. The petitioner had issued an order of termination, dated 10.12.2003, made effective from 10.9.2003. The respondent preferred Complaint (ULP) No.11 of 2004 on the sole ground that the termination is effected retrospectively and principles of natural justice were violated. He claimed to be working from 1.1.2001 till the date of the order of termination dated 10.12.2003. By the interim order dated 15.10.2004, the Labour Court allowed application Exhibit U-2 and after considering that the order of termination was retrospective from 10.9.2003. The petitioner therefore, reinstated the respondent.

7. On the allegation of unauthorized absenteeism, which is vehemently denied by the respondent before this Court, the petitioner claims to have conducted a domestic enquiry and after the

respondent was found guilty of the charge of unauthorized absenteeism, he was again dismissed from service on 10.12.2006.

8. It is an admitted position that the respondent had not raised any issue with regard to the domestic enquiry and the subsequent dismissal in Complaint (ULP) No.227 of 2004. In short, the Complaint was not amended by the respondent. It is stated by Shri Bhosale learned Advocate for the respondent that the respondent is not aware about any enquiry and his subsequent dismissal dated 10.12.2006.

9. What surprises this Court is that without there being any pleadings in the complaint and without there being any challenge to the subsequent purported enquiry, the Labour Court, Latur framed preliminary issues as to whether the enquiry was conducted in a fair manner and whether the findings of the enquiry officer are perverse. Since the R & P of the enquiry was not before the Court, it concluded by order dated 5.8.2011, that the enquiry is defective and the findings are perverse. Thereafter, by judgment dated 4.5.2012, the Complaint was allowed and the respondent was granted reinstatement with continuity and full backwages.

10. It is equally surprising that the petitioner challenged the judgment dated 4.5.2012, before the Industrial Court in Revision

(ULP) No.30 of 2012. However, the Part I judgment of the Labour Court on the enquiry dated 5.8.2011 was not challenged before the Industrial Court.

11. Shri Salunke, learned Advocate clarifies that in amended prayer clause C-1, though the Part I judgment is challenged, inadvertently the date 5.8.2011 is not written and instead the date 4.5.2012 has been mentioned. He, therefore, seeks leave to correct the date in prayer clause C-1. Leave is granted.

12. Shri Bhosale submits that the Industrial Court has permitted the respondent to challenge his termination dated 10.12.2006 as well as the enquiry before the appropriate forum in the event the respondent so desires.

13. In these peculiar and somewhat unusual facts of the case, though Complaint (ULP) No.227 of 2004 has been rightly allowed by the Labour Court as well as by the Industrial Court, the respondent, deserves to be granted the liberty to challenge his purported subsequent dismissal dated 10.12.2006, which is said to be pursuant to a purported enquiry conducted by the petitioner, which is not within the knowledge of the respondent.

14. As such, this petition is partly allowed only to the extent of

observing that, the impugned order dated 5.8.2011, which was totally uncalled for, since the issue of enquiry and subsequent dismissal was not a part of Complaint (ULP) No.227 of 2004, stands quashed and set aside. Consequentially, the order of reinstatement by the Labour Court, dated 4.5.2012, would become inoperative since the respondent / employee is said to have been dismissed w.e.f. 10.12.2006, pursuant to a purported enquiry. The impugned judgment dated 13.3.2014 of the Industrial Court also deserves to be quashed and set aside. However, he will be entitled for wages from 10.9.2003 upto his reinstatement in 2004/2005.

15. Notwithstanding the above, since I find it quite peculiar that the petitioner claims to have conducted a domestic enquiry after reinstating the respondent in 2004 and the respondent claims to have not received any notice of the enquiry or even the dismissal dated 10.12.2006, he would be at liberty to challenge his alleged dismissal dated 10.12.2006, as well as the enquiry, if any, that has been conducted by the petitioner.

16. The respondent can, therefore, prefer a proceeding under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 or the Industrial Disputes Act, 1947 for challenging his purported dismissal dated 10.12.2006 as well as the enquiry and the time spent in litigation before the Labour Court, the

Industrial Court as well as this Court, shall be a good ground for condonation of delay in the event the respondent prefers such a complaint within six weeks from today. Needless to state, his claim for all benefits, inclusive of wages from his alleged absence from 2005, shall be subject to the result of his proposed case.

17. Rule is made partly absolute, accordingly.

(RAVINDRA V. GHUGE, J.)

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