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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2435/2009

Suresh s/o Balasaheb More,
Age : 41 years, Occu. Nil.
R/o Sawargaon, Tq. & Dist. Latur,
...Petitioner...

Versus

Manjara Shetkari Sahakari Sakhar
Kharkhana Ltd., Chincholirao (Wadi),
Vilas Nagar, Latur,
Through its Administrative Officer.
...Respondent...

.....

Shri G.N. Kulkarni, Advocate for petitioner.
Shri Ajinkya Deshmukh, Advocate h/f Shri A.V. Hon,
Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 22.03.2016

ORAL JUDGMENT :

1] I have heard Shri Kulkarni, learned Advocate for the petitioner and Shri Deshmukh h/f Shri A.V. Hon, learned Advocate for the respondent – sugar factory.

2] It is not in dispute that the impugned judgment dated 1.1.2009 delivered by the Industrial Court, Latur, has not been challenged by the respondent – management in this Court. The respondent has, therefore, accepted the

decision of the Industrial Court.

3] The petitioner submits that he was terminated on 19.1.1999 for which he preferred Complaint (ULP) No.44/1999 before the Labour Court at Latur. By the judgment and order dated 25.6.2008, the Labour Court set aside the termination dated 19.1.1999 and directed the respondent to reinstate the petitioner with continuity and full back wages.

4] The respondent preferred Revision (ULP) No.9/2008. By the impugned judgment dated 1.1.2009, the revision petition was partly allowed. The Industrial Court sustained the direction issued by the Labour Court of granting reinstatement with continuity of service to the petitioner. However, the Industrial Court set aside the order of the Labour Court thereby granting full back wages to the petitioner. This judgment of the Industrial Court has been accepted by the respondent – management.

5] It is trite law that a claim for back wages can be entertained if the employee leads evidence to indicate that he was not in gainful employment after his termination, he had made a serious attempt to search for an alternate employment and despite his best efforts, he

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was not able to gain an alternate employment.

6] In the instant case, the petitioner had stated in his oral evidence that he was working with a private sugar factory for a period of four years and was in employment when his deposition by way of examination in chief was recorded on 25.7.2005. It was further contended that the petitioner used to draw Rs.3700/- per month with 48% bonus with the respondent - factory. However, he was drawing only Rs.1500/- per month and one month's salary as bonus with the other private sugar factory. He had taken up an alternate employment since he was starving.

7] Though the petitioner today contends that subsequently the private sugar factory got closed down and he has lost his employment, the fact remains that the evidence that has come on record is that he was in employment when the examination in chief was recorded.

8] It cannot be ignored that the respondent - management has accepted the judgment of the Industrial Court. Notwithstanding the pendency of this petition, the management should have reinstated the petitioner in service.

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9] Shri Deshmukh strenuously contends that the doors of the management were always open for the petitioner to report for duties. It was the petitioner who had no intentions of doing work with the respondent, that he did not report for duties. Shri Kulkarni submits that he made strenuous efforts to report for duties. The mighty respondent used to drive him out from the premises. Being a weak employee, he could not sustain the might of the respondent and, therefore, was unable to perform his duties.

9] This Court cannot go into the disputed questions as have been raised hereinabove. Nevertheless, ends of justice will be met by ensuring that the petitioner is paid some back wages from the date of filing of this petition considering the fact that the respondent has accepted the judgment of the Industrial Court and should have, therefore, issued an order of reinstatement to the petitioner.

10] In the light of the above, this petition is disposed of, however, with a direction to the respondent that the petitioner shall be paid 50% of his wages from April, 2009, till the passing of this order, within a

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period of twelve week from today. Similarly, the petitioner shall submit a joining report within a period of two weeks from today and shall report for duties.

11] Rule is, therefore, discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)