

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4738 OF 2003
AND
CIVIL APPLICATION NO. 5316 OF 2014

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Ahmednagar Division,
Ahmednagar.

..Petitioner

Versus

1. Mirza Arshad Mazahar Baig,
Age 52 years, R/o Rahim Building,
Zendig Gate, Ahmednagar.

2. The Assistant Commissioner,
Deputy Regional Office,
Provident Fund Office Building,
Plot No.11, MIDC, Near Nim House,
Satpur, Nasik 422 0047.

Respondents.

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Advocate for Petitioner : Shri M.D.Shinde h/f Shri M.K.Goyanka
AGP for Respondent 1 : Shri G.N.Kulkarni
Advocate for Respondent 2 : Shri K.B.Choudhary
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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 22, 2016
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ORAL JUDGMENT :-

1. Leave to add respondent No.2 in the Civil Application. Addition be carried out forthwith.

2. Since the Writ Petition was already listed for final hearing by order dated 13.4.2012, I have heard the learned Advocates for the litigating sides on the petition itself.

3. This Court by a detailed order dated 3.9.2004 considered the submissions of the litigating sides and admitted the petition.

4. The petitioner approached the learned Division Bench of this Court in LPA No. 198/2004 and the petitioner was directed to deposit 50% backwages in this Court pursuant to its order dated 21.7.2005. By order dated 23.11.2007, the LPA was allowed. It was brought to the notice of the Appeal Bench that 50% amount of Rs.5,62,572/- was deposited in this Court and the respondent / employee had already withdrawn the said amount by obtaining leave of the Court.

5. By order dated 3.4.2009 in Civil Application No.3307 of 2009 filed by the respondent / employee, this Court directed the release of the gratuity and provident fund accumulations and also directed the release of the monthly pension to the respondent / employee.

6. The respondent, who joined as a Helper in 1977 was working as an Assistant Artisan Mechanic in the Divisional Workshop of the petitioner. It was alleged that on 6.7.1985, he had reported for duties in a drunken state and had abused his superior officer and created a nuisance in the workshop. The petitioner invoked Regulation 61 of the Bombay State Transport Employees' Service Regulation which enabled the petitioner to dispense with the services of the employee without initiating disciplinary proceedings.

7. The respondent challenged his termination vide Complaint (ULP) No.72 of 1986, which was allowed by the Labour Court on 21.11.1995. Revision (ULP) No.23 of 1996, filed by the petitioner before the Industrial Court was also dismissed. Learned Advocate for the petitioner submits that the respondent succeeded in both the Courts since Regulation 61 was quashed by this Court in the matter of Gajanan Gopal Fadake Vs. MSRTC [1984 49 FLR 177]. Both the lower Courts concluded that a departmental enquiry was, therefore, necessary.

8. I have considered the strenuous contentions of the learned Advocates for both the sides.

9. Regulation 61 was already struck down by this Court prior to the date of termination of the respondent. The petitioner could not have invoked the said Regulation. A domestic enquiry was, therefore, a necessity. Having not followed the due procedure of law in conducting an enquiry, the petitioner could have conducted an enquiry before the Labour Court to prove the charges in the light of the ratio laid down by the Honourable Supreme Court in the matter of Bharat Forge Company Ltd., Vs. A.B. Zodge and another [AIR 1996 SC 1556].

10. In the light of the above, I do not find that the conclusions of the Labour Court and the Industrial Court could be faulted since the petitioner did not conduct a fresh enquiry before the Labour Court.

11. Subsequent events that have occurred, pursuant to the orders of this Court and the Appeal Bench, referred to herein above, have an impact on the outcome of this petition.

12. The petitioner has implemented the judgment delivered by the Labour Court. 50% of the backwages for an amount of Rs.5,62,572/- was deposited in this Court and the said amount has already been withdrawn by the respondent. The respondent has attained the age of superannuation on 21.4.2008. Since he worked till his superannuation under the orders of the Labour Court and the refusal of this Court to grant interim relief, the employee has, therefore, earned his salary.

13. Issue, therefore, is as regards the backwages considering the fact that provident fund accumulations and gratuity has already been paid to him and family pension is also being paid under the orders of this Court dated 3.4.2009.

14. Learned Advocate for the petitioner strenuously contends that the principle of “No Work No Wages” for the period of unemployment needs to be made applicable. The Corporation is running into losses. Merely because Regulation 61 was followed under a wrong advise and a departmental enquiry was dispensed with, ought not to result in rewarding the respondent, who has committed serious misconducts.

15. Shri Kulkarni, learned Advocate for the respondent strenuously submits that the petitioner relied on Regulation 61, though it was struck down in 1984. The punishment of termination from service dated 16.9.1986 has made the employee suffer rigors of litigation till he succeeded before the Labour Court on 21.11.1995. He is litigating ever since. 100% backwages, therefore, deserve to be awarded.

16. I have considered the rival contentions on the issue of backwages. The Honourable Supreme Court in the matter of Nicholas Piramal India Ltd. Vs. Harising [2015 II CLR 468], has concluded that the hardship and rigours suffered by an employee can be compensated by awarding 50% backwages. It is also held that the grant of backwages can be considered in the facts of each case.

17. The respondent had admitted in his cross-examination that after his termination, he had left India in February 1990 and travelled to Gulf countries. He however, denied of being employed in the Gulf countries, though he admitted that he was earning a meager salary of about Rs.200/- while being in the service of the Ahmednagar Municipal Council (presently, a Corporation).

18. It is apparent that the petitioner had suffered the judgments of the Labour and Industrial Courts only because it relied upon Regulation 61, being oblivious of the fact that Regulation 61 was quashed by this Court in 1984. Nevertheless, the charges levelled upon the respondent with regard

to the alleged incident of 6.7.1985 are that he was in a state of intoxication when he reported for duties, used unparliamentary language and abused his superiors. Considering these aspects, the fact that he was earning some amount for some time after termination and considering the ratio laid down by the Honourable Supreme Court in the case of Nicholas Piramal (supra), I find it proper to modify the direction of the Labour Court which granted full backwages.

19. As such, this petition is partly allowed only to the extent of modifying the direction of the Labour Court and reducing the payment of backwages. The respondent is, therefore, deprived of 50% of the backwages.

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

21. The pending Civil Application, therefore, does not survive and is disposed off.

(RAVINDRA V. GHUGE, J.)

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