

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3922 OF 2005

1. The Superintending Engineer,
Maharashtra State Electricity Board,
(O & M) Division, Vidyut Bhawan,
Nava Mondha, Nanded,
Taluka and District : Nanded,
2. The Executive Engineer,
Maharashtra State Electricity Board,
Vidyut Bhawan,
Nava Mondha, Nanded,
Taluka and District : Nanded,
3. The Chief Engineer,
(First Appellate Authority),
Beed Zone, Head Quarters,
Parali (Vajjnath), Old Power House,
Parali (Vajjnath), Taluka and
Dist. Beed.

-- PETITIONERS

VERSUS

Vishwanath S/o Shankarrao Kulkarni,
Age-53 years, Occu-Service,
R/o Mayur Vihar Colony,
Near Pawdewadi Naka, 'Guruchhaya',
Nanded, Taluka and District : Nanded

-- RESPONDENT

WITH
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(O & M) Division, Vidyut Bhawan,
Nava Mondha, Nanded,
Taluka and District : Nanded,
2. The Executive Engineer,
Maharashtra State Electricity Board,

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Nava Mondha, Nanded,
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3. The Chief Engineer,
(First Appellate Authority),
Beed Zone, Head Quarters,
Parali (Vajjnath), Old Power House,
Parali (Vajjnath), Taluka and
Dist. Beed.

-- PETITIONERS

VERSUS

Narayan Madhavrao Kamble,
Age-47 years, Occu-Service,
R/o 96, Extension, Dnyaneshwarnagar,
Near Wamannagar, Nanded,
Nanded, Taluka and Dist. Nanded.

-- RESPONDENT

Mr.S.M.Godsay, Advocate for the petitioners.
Mr.S.B.Bhapkar, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 24/08/2016

ORAL JUDGMENT :

1. The petitioner (Erstwhile the MSEB) has challenged the impugned judgment dated 31/01/2005 and 27/01/2005 in Complaint (ULP) No.69/2003 and 71/2003 respectively. The respondents in both these petitions are the original complainants in the said complaints.

2. By the judgment of the Industrial Court, the petitioner is held

guilty of unfair labour practices and has been directed not to recover the amount as stated in the order dated 31/03/2001 and refund the amount to the extent it has been recovered from the respondents.

3. This Court, by its order dated 09/06/2005, has granted interim relief to the petitioners in respect of clause 4 of the order of the Industrial Court.

4. I have heard the learned Advocates for the respective sides on 19/08/2016 and today, at length.

5. It is not in dispute that both the respondents herein were working as Upper Division Clerks with the petitioner at its office at Nanded. One Mr.M.A.Bashir was to retire on 01/02/1997. However, the respondents, by their negligence are said to have failed to notice his retirement date and as a consequence, Mr.Bashir continued in employment till 26/02/1999. After this aspect was noticed, Mr.Bashir was promptly retired and the respondents were issued with charge sheets setting forth the allegations against them.

6. It is the case of the petitioners that the Supdt. Mr.Jogdand and 3 Upper Division Clerks inclusive of these 2 respondents and

Mr.N.M.Wakade were responsible for the acts of negligence and for continuing Mr.Bashir beyond the date of his retirement. The Enquiry Officer held all the 4 persons guilty of negligence and dereliction in duties and directed recovery of an amount of Rs.2,60,000/- paid to Mr.Bashir towards his wages, in equal proportions.

7. Mr.Jogdand preferred a departmental appeal and before passing of the order in the departmental appeal, he had superannuated. His appeal was allowed on the ground that he was not directly responsible. His retirement pursuant to the order of punishment and before the decision on his appeal was also taken into account. It is undisputed that the Enquiry Officer has concluded in his report that no loss was caused to the petitioner Organization since Mr.Bashir had worked for almost 2 years beyond his date of retirement and considering that he has performed his duties and has earned his salary, no loss was caused to the petitioners.

8. The respondents preferred ULP complaints under the MRTU and PULP Act, 1971 before the Industrial Court at Jalna. It was averred in the complaint that no financial loss was caused to the petitioners and the Enquiry Officer had rightly concluded that there was no financial loss caused to the petitioners by the conduct of the

respondents. Though it was averred that the findings of the Enquiry Officer to the extent of holding the respondents guilty of negligence was perverse, the respondents did not pray in the complaint that preliminary issues be cast with regard to the fairness of the enquiry and the findings of the Enquiry Officer and did not pray that the enquiry be quashed and set aside and the findings be declared as perverse.

9. The petitioner filed its written statement and defended its action. The Industrial Court framed 2 issues as to whether the complainants prove ULP against the petitioners and whether they are entitled for any declaration. By the impugned judgment, the complaints were allowed.

10. Mr.Bhapkar, learned Adv. for respondents strenuously contends that both the respondents were working as Upper Division Clerks. Mr.Jogdand was the Supdt. which is the rank of a Superior Officer. He has been exonerated and the respondents have been held guilty. He, therefore, defends the impugned judgment.

11. Mr.Bhapkar places reliance upon the affidavit in reply filed by the respondents and reiterates that the conclusions of the enquiry

Officer are in favour of the respondents. They are held guilty only of the charge of negligence, which is a minor misconduct. Directing the punishment of stoppage of increment and recovery of the amount would therefore amount to double jeopardy. When Mr.Jogdand has been exonerated, the respondents cannot be held guilty. He, therefore, prays for dismissal of these petitions and imposition of heavy costs considering the fact that the respondents have been dragged in litigation and are made to suffer.

12. He further submits that one of the respondents Mr.Kamble has been promoted as Deputy Manager and has suffered monetary loss only because of the imposition of the punishment of stoppage of increment.

13. The Hon'ble Supreme Court in the matter of Radha Kishun Vs. Union of India and others, [(1997)9 SCC 239] has dealt with virtually an identical situation. The Government was directed to initiate disciplinary action against all such persons concerned for deliberate dereliction of duty in not ensuring the retirement of an employee on the date of his superannuation. The relevant observations of the Hon'ble Apex Court in paragraph Nos. 3 to 6 read as under :-

“3. The learned counsel for the petitioner contends that since the

petitioner has worked during the period, he is entitled to the payment of the pay and allowances from 1.6.1991 to 26.6.1994 and that the is also entitled to the payment of Provisional Pension, Death-cum-retirement gratuity, leave encashment commutation of pension amount, GPF money and the amount deposit under CGHS on the plea that he retired from service on May 31, 1994. We are aghast to notice the boldness with which it is claimed that he entitled to all the benefits with effect from the abovesaid date when admittedly he was to retire on May 31, 1991. It would be an obvious case of absolute irresponsibility on the part of the officer concerned in the Establishment in the concerned section for not taking any action to have the petitioner retired from service on his attaining superannuation. It is true that the petitioner worked during that period, but when he is not to continue to be in service as per law, he has no right to claim the salary etc. It is not the case that he was re-employed in the public interest, after attaining superannuation. Under these circumstances, we do not find any illegality in the action taken by the authorities in refusing to grant the benefits.

4. It is then contended that the petitioner would have conveniently secured gainful employment elsewhere and having worked, he cannot be denied of the legitimate salary to which he is entitled to . Though the argument is alluring, we cannot accept the contention and give legitimacy to the illegal action taken by the authorities. If the contention is given acceptance, it would be field day for manipulation with impunity and one would get away on the plea of equity and misplaced sympathy. It cannot and should not be given countenance.

5. Under those circumstances, we dismiss the petition with a direction to the Government of India to take appropriate disciplinary action against all the persons concerned for their deliberate dereliction of duty in not ensuring the petitioner's retirement on his attaining the age of superannuation."

14. The Hon'ble Apex Court has termed the Radha Kishun case in paragraph No.1 as being "*an astonishing and more shocking case*". The petitioner Radha Kishun was the person who was aggrieved by the direction to recover the amount paid to him beyond his actual date of retirement. It was directed by the Hon'ble Apex Court that the recovery of the wages from the said employee was proper.

15 It is undisputed in the instant case that Mr.Bashir was to retire on 01/02/1997 and continued to work upto 26/02/1999. It is also an undisputed position that the petitioner did not choose to recover the salary from Mr.Bashir in these past 17 years. Considering the same, I am not dealing with the said issue as it is not addressed to the Court in these proceedings.

16. In so far as the exoneration of Mr.Jogdand is concerned, I am unable to concur with the submissions of Mr.Bhapkar that because he has been exonerated, none of the respondents could be punished.

Both the respondents were working as Upper Division Clerks. It requires no debate that it is a clerical job to deal with the retirement of an employee and his service record. It is the clerks who prepare the necessary notice of intimation prior to retirement thereby indicating to the employee that he would retire on a particular date. The papers pertaining to clearance of dues and issuance of no dues certificate, calculation of retiral benefits etc. is the job of a clerk. Unless the clerk prepares these papers and places them before an Appropriate Authority for obtaining signatures and issuance of such notices, the Superior Authority may not be able to keep track of the date of retirement of Class IV employees.

17. In this backdrop, the Superintendent appears to have been exonerated. Notwithstanding his exoneration, the Upper Division Clerks cannot be exonerated since it cannot be ruled out that they may have acted in collusion with Mr.Bashir. The Industrial Court has interfered with the punishment only on the ground that because Mr.Jogdand was exonerated and no financial loss was caused to the petitioners, it would necessarily lead to the exoneration of the respondents.

18. If the observations of the Hon'ble Supreme court in the Radha Kishun judgment (supra) are noted, a view has been expressed that if

any legitimacy to the illegal act is granted, it would be a field day for manipulation with impunity and get away on the plea of equity and misplaced sympathy.

19. In my view, the Industrial Court appears to have shown misplaced sympathy towards the respondents only because it presumed that there was no loss caused to the petitioners in the light of the report of the Enquiry Officer. Continuance beyond the date of superannuation and payment of salary notwithstanding that the said employee has worked, is indeed a loss caused to the employer. Such an act cannot be countenanced.

20. In the light of the above, I find that the impugned judgment of the Industrial Court is perverse and erroneous. Both these writ petitions are therefore allowed. The judgment of the Industrial Court dated 31/01/2005 and 27/01/2005 stand quashed and set aside and complaint (ULP) NO.69/2003 and 71/2003 filed by the respondents stand dismissed.

21. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)