

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

WRIT PETITION NO. 77 OF 2004

1 John Distilleries Private Limited,
village Chitali, Tq.Rahata,
District Ahmednagar.

2 The Chief Executive,
Chitali Distillery Limited,
Chitali, Tq.Rahata,
District Ahmednagar.

...PETITIONERS

-VERSUS-

1 The State of Maharashtra.
Through Deputy Commissioner Labour,
Nashik Division, Nashik.
(Stands deleted as per today's order)

2 Ratnakar s/o Samual Kopre,
Age : 62 years, Occupation : Nil,
R/o Chitali, Tq.Rahata,
District Ahmednagar.

...RESPONDENTS

**WITH
CIVIL APPLICATION NO.8029 OF 2004
IN WP/77/2004
WITH
CIVIL APPLICATION NO.8462 OF 2005
IN WP/77/2004**

...

Advocate for Petitioner : Shri C R Bharswadkar.

AGP for Respondent 1/ State : Shri P.N.Kutti.

Advocate for Respondent 2 : Shri S.V.Natu.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th September, 2016

Oral Judgment :

1 Petitioner No.1/ Western Maharashtra Development Corporation Limited is deleted and John Distilleries Private Limited is added as Petitioner No.1 pursuant to the orders of this Court. Consequentially, Respondent No.1/ State of Maharashtra stands deleted.

2 After the order dated 02.09.2016 was passed by this Court, the matter was adjourned for considering further submissions of the learned Advocates.

3 Shri Bharaswadkar, learned Advocate for the Petitioners, submits that the possibility of settlement was mutually discussed and the Petitioners have communicated through an email that Rs.40,000/- as a lump sum quantified compensation will be paid to the Respondent/ Employee and the entire litigation between the parties arising out of the employment and unemployment of the Respondent/Employee shall be brought to an end. The amount of Rs.40,000/- will, therefore, be paid to the Respondent/Employee on or before 15.10.2016 through the banker's

cheque or demand draft.

4 Shri Natu, learned Advocate for the Respondent/ Employee, opposes the said proposal and contends that the petition be dismissed.

5 Considering the submissions of Shri Bharaswadkar, it is apparent that the Petitioner is agreeing to pay 25% back wages to the Respondent/ Employee. He, however, submits that if the Respondent/ Employee is not agreeable, this petition may be considered on its own merits.

6 I have considered the strenuous submissions of the learned Advocates. There is no dispute that the Labour Court has granted relief of 25% back wages to the Respondent/ Employee considering the gravity of misconduct and has converted the dismissal into discharge. While doing so, the Labour Court has concluded in paragraph 49 as under:-

"49. *But after considering the gravity and seriousness of the proved misconduct as against the D.E. in the respect departmental enquiry so proved against him, so also after taking into consideration the admitted superannuation of the D.E. at the age of 58 years in the year 1997 his reaching superannuation already, the punishment of dismissal so impugned in this matter is held to be slightly disproportionate to some extent and not shockingly disproportionate and harsh one.*"

7 It is apparent from the conclusion of the Labour Court reproduced above, that it has interfered with the punishment on the ground of it being "*slightly disproportionate*" and "*not shockingly disproportionate and harsh*". Apparently, this conclusion is unsustainable in law for the reason that the Honourable Supreme Court in the matter of *Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain*, **2005 (104) FLR 291**, has laid down the law that unless the punishment awarded to the employee is shockingly disproportionate, there should not be interference in the quantum of punishment on the ground that the punishment is slightly disproportionate.

8 However, since the Petitioners have agreed to pay Rs.40,000/- in order to bring the litigation to an end and render finality to the long litigation between the parties, I am accepting the proposal of the Petitioners.

9 As such, this Writ Petition is partly allowed. The direction of the Labour Court in the impugned award dated 04.08.2003 shall stand modified and shall be replaced by the direction that the Petitioner shall pay Rs.40,000/- (Rupees Forty Thousand) towards back wages to Respondent No.2/ Employee on or before 15.10.2016.

10 Rule is made partly absolute accordingly.

11 The pending Civil Applications do not survive and stand
disposed of.

kps

(RAVINDRA V. GHUGE, J.)