

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5670 OF 2003

Ismail Abdul Pathan,
Age-51 years, Occu-Nil,
R/o Laxmi Nagar, Vasahat,
At Post Tq. Kopargaon,
Dist.Ahmednagar

– PETITIONER

VERSUS

Sanjivani Sahakari Sakhar Karkhana
Ltd., Sahajanand Nagar,
Tq.Kopargaon, Dist.Ahmednagar,
Through it's Managing Director

– RESPONDENT

WITH
WRIT PETITION NO.5672 OF 2003

Ismail Abdul Pathan,
Age-51 years, Occu-Nil,
R/o Laxmi Nagar, Vasahat,
At Post Tq. Kopargaon,
Dist.Ahmednagar

– PETITIONER

VERSUS

Sanjivani Sahakari Sakhar Karkhana
Ltd., Sahajanand Nagar,
Tq.Kopargaon, Dist.Ahmednagar,
Through it's Managing Director

– RESPONDENT

Mr.N.R.Bhavar, Advocate for the petitioner.
Mr.Ajinkya Deshmukh h/f Mr.A.V.Hon, Advocate for respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 02/12/2016

ORAL JUDGMENT :

1. Both these petitions are filed by the same employee against the same sugar factory. Both petitions are admitted on 15/03/2004.

2. The Labour Court, Ahmednagar by its judgment dated 18/02/1995 had decided Application (BIR) No.4/1988 and granted reinstatement with continuity and 1/3rd back wages to the petitioner. He preferred Appeal No.2/1995 before the Industrial Court seeking full back wages. The respondent/Management preferred Appeal No.1/1995 praying for setting aside of the judgment of the Labour Court. By the impugned judgment dated 12/08/2003, the petitioner's appeal was dismissed and the respondent's appeal was allowed by the Industrial Court. Judgment of the Labour Court was set aside and the Application (BIR) No.4/1988 filed by the petitioner was dismissed. Hence these two writ petitions by the same employee.

3. I have heard the strenuous submissions of the learned Advocate for the petitioner and Mr.A.V.Hon, learned Advocate alongwith Mr.Deshmukh for the respondent/management.

4. Upon considering their submissions, I have gone through the record available.

5. There is no dispute that the petitioner joined the respondent/factory as a “cleaner” on a truck on 01/01/1974. He was deployed in the Garage Department. Several times, he used to drive the vehicle since he held a valid driving license.

6. He was issued with a charge sheet alleging that while reversing the tanker on the ramp of the garage belonging to the factory, the cap on the tanker and the girder of the garage got damaged. Learned Advocate for the petitioner submits that today, repairs for the said damage would cost about Rs.5,000/- and in 1987, it would cost about Rs.100/-.

7. There is no dispute that a domestic enquiry was conducted and upon the charges being proved, the petitioner was dismissed from service by order dated 18/11/1987 w.e.f. 19/11/1987.

8. It is also not disputed that the Labour Court did not vitiate the enquiry and therefore the matter proceeded only to the extent of whether the punishment of dismissal from service awarded to the petitioner was commensurate to the gravity of the mis-conduct. It is also not disputed that the petitioner was once warned on

11/02/1979, suspended for one day on 09/09/1979, suspended for two days on 10th and 11/03/1981 and suspended for four days from 15/09/1981 to 18/09/1981 for minor misconducts.

9. The Labour Court, vide its judgment dated 18/02/1995, concluded that the punishment of dismissal from service was shockingly disproportionate considering the past record of the petitioner and granted reinstatement with continuity and 1/3rd back wages. He was deprived of 2/3rd back wages by way of punishment and besides the same, the Labour Court directed the punishment of 4 days suspension.

10. By the impugned judgment, the Industrial Court has quashed the judgment of the Labour Court and has concluded that the punishment of dismissal from service was proportionate. The respondent has strenuously supported the judgment of the Industrial Court and has contended that in the writ and supervisory jurisdiction of this Court, there should be no interference in the matter. In the alternative, he places reliance upon the judgment of the Hon'ble Supreme Court delivered in the matter of Gauri Shanker Vs. State of Rajasthan, 2015(2) CLR 497 to contend that only 25% back wages can be granted in the event this Court desires to cause

any interference.

11. The Industrial Court, in my view, has fallen in a patent error while concluding that the judgment of the Labour Court is perverse. It has concluded in paragraph No.9 that once the enquiry is sustained and the Management has not acted illegally, the Labour Court should not interfere with the punishment. It appears that the Industrial Court has lost sight of the Law that if the punishment appears to be shockingly disproportionate to the gravity and the seriousness of the misconducts by considering the past service record, the punishment can be suitably modified. If the past service record is highly blemished, it would operate as an aggravating factor and if it is a clean past record, it would operate as a mitigating factor.

12. In the instant case, the roof cap of the tanker got damaged as it got stuck in the shutter of the garage which was not adequately open to let the tanker enter the garage. When the petitioner was reversing the tanker, so as to climb the ramp of the garage, the Technician Incharge of the garage should have ensured that the shutter is adequately open so as to let the tanker enter into the garage.

13. Nevertheless, without going into this aspect, punishment of

dismissal can be awarded to an employee, who has committed a grave and serious misconduct. The instant misconduct at issue cannot be said to be so grave and serious that the punishment of dismissal which amounts to civil death, could be awarded to the petitioner considering the minor blemishes in his past service record. From 1981 till 1987, not a single misconduct has been reported against the petitioner. Therefore, considering the view laid down by the Hon'ble Supreme Court in the matter of Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain, [2005(104) FLR 291] if the punishment appears to be shockingly disproportionate, an interference is called for.

14. It is informed that the petitioner has attained the age of superannuation in 2012. His last drawn wages were @ Rs.1,050/- per month. As such, there cannot be an order of reinstatement.

15. Learned Advocate for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the matter of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, [(2013)10 SCC 324] in support of his contention that 100% back wages should be granted. I am depriving the petitioner of 50% back wages by way of punishment for the minor misconduct committed by him.

16. In the light of the above, the impugned judgment of the Industrial Court dated 12/08/2003 is quashed and set aside. Appeal No.1/1995 filed by the respondent/Management is partly allowed by sustaining the order of continuity in service and Appeal No.2/95 is partly allowed by awarding 50% back wages till the date of his retirement. These two petitions are, therefore, partly allowed and rule is made partly absolute in the above terms.

17. The respondent shall therefore calculate 50% back wages by considering Rs.1,050/- per month as the last drawn wages from 19/11/1987 till the age of retirement of the petitioner and pay the said amount within a period of 12 weeks from today, failing which the said amount shall carry interest @ 5% from the date of judgment of the Labour Court which is 18/02/1995.

(RAVINDRA V. GHUGE, J.)