

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6197 OF 2015

The Maharashtra State Electricity
Distribution Company Limited,
Through : Its -

1. The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited,
Chanakya Complex,
Kacheri Road, Old Jalna,
Tq and Dist. Jalna,
2. The Executive Engineer,
Maharashtra State Electricity
Distribution Company Limited,
Kannad Division, Kannad,
Tq. Kannad, Dist.Aurangabad

PETITIONERS

VERSUS

Laxman S/o Gulabrao Punde,
Age-35 years, Occu-Nil,
R/o House No.4-34-1179,
New Hanuman Nagar, N-4,
CIDCO, Aurangabad

RESPONDENT

Mr.S.M.Godsay, Advocate for the petitioners.
Mr.S.T.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/01/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. The petitioner/Management has challenged the judgment of the Industrial Court dated 05/03/2015 delivered in Revision (ULP) No.23/2014 by which the revision petition has been allowed and the judgment of the Labour Court, dated 28/02/2014, dismissing the complaint filed by the respondent, has been set aside.

3. The petitioner submits that the respondent was appointed in service as a "Sub-Engineer" by following the due procedure of law on 06/05/2010. On 10/05/2010, the respondent was called upon to fill up a form for declaring his personal details as well as state whether he has suffered any conviction or arrest in any criminal case. Pursuant to the submission of the form, which was kept blank to the extent of the declaration of his antecedents, the petitioner followed its procedure in collecting information. It was revealed that the respondent was facing Crime No.I-83/2010 u/s 309 of the IPC, which was registered with the Mukund Wadi Police Station.

4. It is further submitted that the respondent tendered his resignation on 11/06/2010 which was subsequently withdrawn on 18/06/2010. The petitioner considered the said withdrawal and by

order dated 19/06/2010, the respondent was sanctioned leave from 11/06/2010 to 18/06/2010.

5. The petitioner received concrete information from the Police Department by its report dated 29/07/2010 and it was confirmed that the respondent was facing the crime mentioned above for the offence of attempting to commit suicide. A disciplinary proceeding was initiated against him and consequent to the conclusion of the enquiry, the respondent was terminated from service dated 22/12/2011. He challenged the said action in Complaint (ULP) No.20/2011 before the Labour Court at Jalna. By its judgment dated 28/02/2014, the Labour Court concluded that the enquiry was conducted in a fair and proper manner, findings of the Enquiry Officer are not perverse and the punishment awarded to the respondent is not shockingly disproportionate.

6. The respondent challenged the dismissal of his complaint in Revision (ULP) No.23/2014. The Industrial Court, while considering the revision petition, concluded that even if it is accepted that the respondent was guilty of suppression of information, it cannot be ignored that the respondent was acquitted in S.C.C.No.4922/2007 by order dated 26/06/2012. Taking into account the said development

as well as the gravity of the misconduct proved, the Industrial Court concluded that the respondent deserves to be reinstated in service with continuity, but without back wages.

7. Mr.Godsay, learned Advocate for the petitioners has seriously criticized the impugned judgment of the Industrial Court. Grievance is that the very entry of the respondent in service is based on suppression of facts. Such employee cannot be retained in service. So also, he has selectively kept blank spaces in the proforma only with the intention of not disclosing the pendency of the criminal case. The conclusion of the Industrial Court that he may have inadvertently left blank spaces, is a result of misplaced sympathy shown by the Industrial Court. He, therefore, prays for quashing of the impugned judgment.

8. Mr.Shelke, learned Advocate for the sole respondent has supported the impugned judgment. He submits that pending registration of a crime would not mean that the respondent is guilty of the offence. The respondent inadvertently / due to oversight has not filled in the information. Moreover, the crime registered against the respondent was in fact not with regard to any offence or activity which could be termed to be against the Society. He was charged

with having attempted to commit suicide and as such, the act of suppression of the crime registered is not of the magnitude for which the respondent could be dismissed from service.

9. He further states on the basis of the record that the respondent had climbed a water tank and had threatened to commit suicide if the injustice at the hands of the Cidco Police Station was not done away with. There was no attempt made. It was only a threat held out. The police station, therefore, has registered the offence against him in a revengeful manner. Same has been set aside as the respondent has been discharged from the said crime.

10. He further submits on instructions that the respondent is an educated and qualified person who has been selected as a Sub-Engineer after the petitioner conducted a proper selection process. He is in dire need of employment. He further submits on instructions that the respondent is willing to waive his wages from the date of judgment of the Industrial Court till the date of reinstatement only because he has the intention to serve in employment and cannot survive unemployment.

11. I have considered the submissions of the learned Advocates as

have been recorded hereinabove.

12. In so far as keeping blank spaces in the proforma is concerned, there is no dispute that the respondent did not mention in the form that a crime was registered against him. It is also not in dispute that he had threatened an action of committing suicide against the Cidco Police Station in a heat of frustration and anger on account of suffering unemployment in young age. The police, therefore, are said to have registered a crime against him owing to a threat held out by him. It is also not in dispute that the respondent has been discharged from the said offence.

13. Considering the fact situation as above, I find that the punishment of dismissal from service is a shockingly disproportionate punishment. Even if it is to be assumed that the respondent was rightly dismissed, he has been acquitted of the offence. It is trite law that an employee has to be reinstated if he further succeeds in getting an acquittal and his conviction is set aside.

14. Considering the above, I am of the view that the Industrial Court has rightly concluded that the respondent deserves to be

reinstated in service with continuity.

15. The Industrial Court has rightly deprived the respondent of the back wages. Similarly, a statement is made before this Court by the respondent that he would not claim back wages from the date of judgment of the Industrial Court till his date of reinstatement as a goodwill gesture and in order to develop cordial relations with the employer. In my view, the said statement deserves to be accepted.

16. In the result, this petition is partly allowed to the extent of depriving the respondent of his wages from 05/03/2015 till 31/01/2016. The petitioner shall reinstate the respondent with continuity of service w.e.f. 01/02/2016.

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

(RAVINDRA V. GHUGE, J.)