

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION STAMP NO. 14274 OF 2014
IN
WRIT PETITION NO. 307 OF 2014

Asaram Kisan Borude .. Applicant

Versus

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

Shri Ajeet B. Kale, Advocate for the Applicant.

CORAM : S. V. GANGAPURWALA, J.
DATE : 18TH MARCH, 2016.

PER COURT :-

1. Mr. Kale, the learned counsel for the applicant submits that, this Court while partly allowing the writ petition and setting aside the order of Industrial Court to the extent of grant of 50% back wages has relied upon the observation made by the Industrial Court that, during the period the petitioner was terminated and the order is passed by the Industrial Court the present applicant was gainfully employed. The said observation of the Industrial Court is contrary to the evidence and not in consonance with the facts on record. According to the learned counsel, the Labour Court had considered that the petitioner is not gainfully employed and had awarded 100% back wages. The learned counsel submits that, the observation of this Court that the petitioner was gainfully employed during the said period is contrary to the record and is a error apparent on face of record. The learned counsel further

submits that, the petitioner ought to have been granted 50% back wages as granted by the Industrial Court. The deduction of 50% of back wages was only on account of negligence of the present applicant.

2. The jurisdiction of this Court in entertaining Review is in a narrow compass. The same cannot be treated as an appeal in disguise. The present applicant had accepted the judgment of the Industrial Court. The Industrial Court had observed as under -

“The evidence of the opponent, if perused, it indicates that he was gainfully employed during the period of his unemployment. In fact, the evidence and more particularly cross-examination of the opponent do not help him properly to prove his innocence or his non-involvement in any of the misconduct. The opponent was having ample opportunity to examine witnesses in defence but he has not done so for the reasons best known to him. In sum and substance, the opponent failed to prove item 1(a) to (f) in any manner whatsoever. However, he has definitely proved that the punishment imposed on him is shockingly disproportionate by virtue of which his employment has been brought to an end. Still, he has ample good years to serve with the applicant and throwing him out of employment at this stage ought not to have been proper on the part of the applicant. However, he, having indulged in act of negligence in duties, I am of the opinion that denial of 50% back wages from the date of dismissal till today, would be an appropriate punishment. In the circumstances, I am of the opinion that the opponent is entitled for the relief of reinstatement as directed by the learned Labour Court, with continuity of service and 50% back wages.”

3. Grant of back wages has an element of discretion. This Court considered the judgment of the Industrial Court and

observation of the Industrial Court that the petitioner was gainfully employed and also the fact that the present applicant was negligent in performance of his duties had refused to award back wages.

4. No error apparent on face of record. In view of that, Review Application is rejected. No costs.

[S. V. GANGAPURWALA, J.]

sam/Mar.16