

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

WRIT PETITION NO.11020 OF 2015

Ashok s/o Appasaheb Tupe,
Age : 46 years, Occupation : Labour,
R/o Gul Limb, Fattiyabad,
Taluka Shrirampur,
District Ahmednagar.

...PETITIONER

-VERSUS-

Pravara Medical Trust.
At Post Loni, Taluka Rahata,
District Ahmednagar.
Through it's Trustee & Secretary.

...RESPONDENT

...

Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondent : Shri V.D.Hon, Senior Advocate a/w Shri Hon
Ashwin V.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th August, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 I have heard Shri Barde, learned Advocate for the Petitioner/
Employee and Shri Hon, learned Senior Counsel for the Respondent/

Management.

3 The litigating sides have relied upon the following judgments:-

- (1) *Workmen of the Motipur Sugar Factory Private Limited vs. The Motipur Sugar Factory Private Limited*, **AIR 1965 SC 1803**.
- (2) *The Cooper Engineering Limited vs. PPMundhe*, **AIR 1975 SC 1900**.
- (3) *Shambhu Nath Goyal vs. Bank of Baroda*, **AIR 1984 SC 289**.
- (4) *Rajendra Jha vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad*, **AIR 1984 SC 1696**.
- (5) *Karnataka State Road Transport Corporation vs. Smt.Lakshmiddevamma*, **AIR 2001 SC 2090**.
- (6) *Engineering Laghu Udyog Employees' Union vs. Judge, Labour Court and Industrial Tribunal*, **(2003) 12 SCC 1**.
- (7) *Board of Trustees of the Port of Mormugao, Goa vs. Yamunappa C. Gaudar*, **2009(2) Mh.L.J. 337**.

4 Undisputed factors in this case are as under:-

- (a) The Petitioner/ Employee was appointed as a Watchman on 01.06.1993.

- (b) He worked continuously till 19.05.1996.
- (c) The Management claimed that he had resorted to absenteeism from 19.05.1996.
- (d) The Petitioner alleges that he was prevented from reporting for duties from 19.05.1996.
- (e) The Petitioner filed Complaint (ULP) No.286/1999 on 29.11.1999 claiming the work and oral refusal of work.
- (f) The Management filed it's Written Statement and took a stand that the Petitioner was struck off the rolls on 12.08.1996.
- (g) On 29.09.2004, the Petitioner withdrew the complaint.
- (h) The Petitioner raised an industrial dispute in 2008 and the same was referred to the 2nd Labour Court, Ahmednagar by the order of reference dated 11.09.2009 passed by the Deputy Commissioner of Labour, Nashik Division, Nashik.
- (i) The terms of reference by the Deputy Commissioner of Labour were based on the failure report, which read thus:
“Whether, Mr.Ashok Appasaheb Tupe (herein after referred as the second party) should be reinstated in service with full back wages and continuity of services with effect from 11.09.2009.”
- (j) The Petitioner/ Employee filed his statement of claims on 25.12.2010.

- (k) The Respondent filed it's Written Statement on 23.07.2010.
- (l) The Management in paragraph 10 of it's Written Statement specifically averred that *“Thereby the second party has himself terminated the contract of employment. In view of this the first party as stated in the letter dated 05.08.1996 has removed the name of the second party w.e.f. 12.08.1996.”*
- (m) The Management has taken a specific stand that they have not terminated the Petitioner, but he has abandoned his employment from 19.05.1996.
- (n) No domestic enquiry was conducted against the Petitioner by the Management.
- (o) In paragraph 15 of it's Written Statement, the Management contended that it had conducted an enquiry and removed the name of the Petitioner from the muster roll.
- (p) The record and proceedings of the purported domestic enquiry were not placed before the Labour Court.
- (q) Though the Labour Court has considered all the issues framed by it, it has answered the reference in the negative vide it's judgment and award dated 09.12.2014 on the sole ground that there was no termination of the Petitioner on 11.09.2009 and he was struck off the rolls by the Management on

12.08.1996.

- (r) The Petitioner had put in two years and 11 months in service and is out of employment for about 20 years and two months.

5 Having considered the submissions of the learned Advocates, I am not considering the issues as regard whether, the Management reserved a right to conduct a de-novo enquiry and whether, the Management is required to reserve such right only in the Written Statement.

6 The reason why I am not dealing with these two issues is that Shri Barde submits on instructions that remand of the matter to the Labour Court would cause grave hardships and manifest inconvenience to the Petitioner since he would have to undergo the rigours of litigation. It is instead submitted that since the Petitioner has put in about three years of service which is undisputed, this Court may consider quantification of compensation.

7 Shri Hon submits that there is no record with regard to conducting a domestic enquiry as is strictly understood in the Standing Orders.

8 In my view, if the Petitioner was absent from 19.05.1996, the Management could not have presumed abandonment of service in three months when his name was struck off the rolls on 12.08.1996. It is settled law that unless the absence is for a long period and the Employee keeps himself away for such a considerable period that it would be easily assumed that he has abandoned the service and as such, there would be no reason to conduct an enquiry as it would be of no consequence.

9 I do not find from the Written Statement that the Management has reserved its right to conduct a de-novo enquiry.

10 The Honourable Supreme Court, in the following four judgments, has laid down that where a short spell of employment is followed by a long duration of unemployment, rather than granting reinstatement with or without back-wages, the Court could quantify the compensation :-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];*
- (c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558]; and*

(d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board,*
[(2009) 15 SCC 327].

11 The ratio laid down by the Honourable Apex Court in the above four judgments is that an amount of Rs.30,000/- per year of service put in by the employee, can be sufficient compensation.

12 In this backdrop, since the Petitioner has put in about three years in service and is out of employment for more than 20 years, I deem it proper to quantify compensation by placing reliance upon the view taken by the Honourable Supreme Court in the above four cases. The last drawn wages of the Petitioner were Rs.875/- per month as in May, 1996.

13 Considering the ratio laid down by the Honourable Supreme Court in the above referred four cases, I deem it proper to modify the impugned award and direct the Respondent / Management to pay the Petitioner an amount of Rs.1 lac within a period of TWELVE WEEKS from today, failing which the said amount would carry interest at the rate of 6% per annum from the date of the award which is 09.12.2014.

14 This Writ Petition is, therefore, partly allowed. The impugned award is modified with the direction to the Management to pay

compensation as above.

15 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)