

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

WRIT PETITION NO. 8537 OF 2014

Pradeep s/o Vithalrao Gond,
Age : 36 years, Occupation : Service,
R/o At Post Kharola,
Tq.Renapur, Dist.Latur.

...PETITIONER

-VERSUS-

Osmanabad Janta Sahakari Bank Ltd.,
Main Road, Osmanabad,
Tq. & Dist.Osmanabad.
Through it's Executive Director.

...RESPONDENT

...
Advocate for Petitioner : Shri Patil Indrale Anand V.
Advocate for Respondent : Shri Irpatgire A.N..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2016

Oral Judgment :

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

2 The Petitioner/ Employee is aggrieved by the judgment of the Industrial Court dated 06.03.2014 by which the direction to pay 25% back wages issued by the Labour Court has been set aside and no back wages have been granted.

3 I have considered the submissions of Shri Patil and Shri Irpatgire, learned Advocates for the Petitioner and the Respondent, respectively at length.

4 I am not required to go into the contentions of the Petitioner set out in the ULP complaint before the Labour Court for the reason that it is now an admitted position that the oral termination of the Petitioner dated 16.06.2000 has been set aside after the departmental enquiry conducted by the Respondent was held to be bad in law and the charge of absenteeism was not proved. Both the litigating sides were before the Industrial Court. The Petitioner/ Employee prayed for 100% back wages considering that the Labour Court had granted him reinstatement with continuity and 25% back wages w.e.f. 16.06.2000. The Respondent Bank had filed the revision petition seeking quashing of the direction to reinstate the Employee with continuity and 25% back wages.

5 The Revision Petition filed by the Petitioner/ Employee was dismissed and the one filed by the Respondent Management was partly allowed only to the extent of setting aside the direction of the Labour Court to pay 25% back wages. The Respondent Management has not preferred a writ petition for challenging the judgment of the Labour Court

as well as the Industrial Court.

6 In the above backdrop, the issue is as to whether, the Petitioner/ Employee is entitled to any back wages and as to whether, the Industrial Court has rightly set aside the direction of payment of 25% back wages. It is undisputed that the Labour Court had framed two issues with regard to the fairness of the enquiry and the findings of the Enquiry Officer, below Exhibit O/3. By its part-1 judgment, though the enquiry was held to be fair and proper, the findings of the Enquiry Officer were held to be perverse. Consequentially, the entire enquiry stood vitiated and watered down.

7 The Respondent Management led evidence before the Labour Court to prove the charges against the Petitioner / Employee. Since the charges were not proved, the Labour Court granted reinstatement with continuity of service. To the extent of back wages, it appears from the judgment of the Labour Court as well as the Industrial Court that the Petitioner/ Employee had not led any evidence as regards the back wages. The conclusion drawn by the Labour Court in paragraph 12 of the impugned judgment reads as under:-

“12. As far as question of back wages is concerned, the witness of the respondent has not uttered a word about gainful employment of the complainant after

he was refused to resume duties by the respondent. Hence, considering the principle of 'no work, no wages', it would be appropriate to direct the respondents to pay 25% back wages to the complainant as he is refused to work when he attempted to resume duties. Accordingly, I answer issue No.1 and 2 in affirmative.”

8 In my view, the conclusion of the Labour Court in the above reproduced paragraph 12 is totally in opposition to the ratio laid down by the Honourable Supreme Court in the matter of *J.K. Synthetics Limited vs. K.P.Agrawal*, **2007(2) SCC 433**.

9 The ratio laid down in the *J.K.Synthetics case (supra)* in paragraph 18 reads as under:-

“18. Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in *Rudhan Singh [(2005) 5 SCC 591, G.M. Haryana Roadways vs. Rudham Singh]* and *Uday Narain Pandey [(2006) 1 SCC 479, U.P.State Brassware Corpn. Ltd. vs. Uday Narain Pandey]*. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not

have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.”

10 The law is, therefore, settled that when there is an order of reinstatement with continuity in employment, there cannot be an automatic grant of back wages. As held by the Honourable Supreme Court, it is necessary for the Employee to plead that he was not gainfully employed from the date of his termination. Though the burden does not lie on the shoulders of the Employee to prove the negative, the Honourable Apex Court holds the view that he has to at least assert on oath that he was neither employed nor engaged in any employment or in business or had a source of earning. Once he leads such evidence, the burden would shift on the Employer.

11 The conclusion of the Labour Court that the Management has not even whispered that the Employee was gainfully employed, without the said Employee having led any evidence on the issue of gainful employment, is a perverse conclusion. The Industrial Court has, therefore, rightly interfered with the said conclusion.

12 Shri Patil has placed reliance on the Division Bench judgment of this Court in the matter of *Taranjitsingh I. Bagga vs. MSRTC*, **2008(3)**

Mh.L.J. 743 : 2008(4) Bom.C.R. 330, to contend that the learned Division Bench of this Court has considered the ratio laid down by the Honourable Apex Court in the *J.K. Synthetics (supra)* and yet has come to the conclusion that the back wages need to be granted to the Employee.

Paragraph 8 of the judgment in *Taranjitsingh (supra)* reads as under:-

“8. *Learned Advocate Shri Mehadia for the respondent submitted that the law has undergone change and unless the employee pleads and proves that he was not gainfully employed, he would not be entitled to back wages automatically upon reinstatement. As the apex Court has observed time and again, the question of entitlement to back wages would depend on the facts and circumstances of each case, and there can be no straitjacket formula. The Court cannot be oblivious to the fact that an employee, whose services were terminated wrongly, has not only to fight for his survival by getting such odd jobs as he can, but has also to fight a battle for getting himself reinstated in service. The courts cannot be oblivious to the fact that such legal adventure is costly and would eat up a large chunk of whatever meagre income that the employee may be able to make by getting any odd job. At the same time, no Court can be oblivious to the grim reality of unemployment pervading all stratas of the society. Therefore, we would not be in a position to conclude that the moment a person is sacked he can find alternate means of his wherewithal. In this situation, it would be unjust to insist upon a technical requirement of pleading and proof of absence of gainful employment by an employee who is wrongfully dismissed.*”

13 Upon going through the judgment delivered in the *Taranjitsingh case (supra)*, this Court has relied upon paragraphs 19 and

20 of the *J.K. Synthetics (supra)*. However, paragraph 18 of the *J.K. Synthetics (supra)* which is reproduced herein above, would apply to this case. So also, in the case of the Petitioner herein, there was a charge levelled upon him and a domestic enquiry was conducted against him. It was in the backdrop of these allegations that the Labour Court went into the aspect of whether, the enquiry was fair and proper. On the evidence led before the Labour Court, it came to the conclusion that the charges were not proved against the Petitioner Employee. It, therefore, granted 25% back wages only for the reason that the Management, though led evidence, did not adduce any evidence with regard to whether, the Employee was gainfully employed pursuant to his removal from service. This conclusion of the Labour Court, being in opposition to paragraph 18 of the judgment of the Apex Court in *J.K. Synthetics (supra)*, is perverse.

14 Considering the above and merely because a second view is possible, I do not find that the impugned judgment of the Industrial Court calls for an interference.

15 As such, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.