

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2312 OF 2016

Jalgaon Jilha Rajya Shaskiya
Karmachari Sahakari Patpedhi Ltd.,
33, Mahatma Fule Market,
Jalgaon through its Chairman
Shri Devendra Dayaram Chandankar
Aged 48 years, Occ. Service
R/o Jalgaon, Dist. Jalgaon.

..Petitioner

Versus

Shri Baburao Ramdas Ladvanjari
Aged 67 years, Occ. Nil
R/o Sant Dnyaneshwar Chowk,
Joshi Wada, Mehrun, Jalgaon.

..Respondent

...
Advocate for Petitioner : Shri Salunke P.B. h/f Shri Pawar V.A.
Advocate for Respondent : Shri Wani Girish V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 07, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. While issuing notice on 2.3.2016, this Court had passed the following order:-

“1. The petitioner is aggrieved by the judgment and award dated 16.04.2015 delivered by the Labour Court, Jalgaon by which Reference IDA No. 21/2012 has been partly answered in the affirmative. The order of dismissal issued by the petitioner as against the respondent dated 01.07.1995 has been held to be illegal and set aside. 50% back wages have been granted with continuity in service from the date of dismissal till attaining the age of superannuation.

2. I have heard Mr. Pawar, learned Counsel for the petitioner.

3. I find that the issues as to whether the departmental enquiry conducted was vitiated and as to whether the findings of the enquiry officer are perverse, were framed. Both the issues were not decided in order to deliver the Part I award by the Labour Court, much against the ratio laid down by this Court (Maharashtra State Cotton Growers Marketing Federation Vs. Vasant Ambadas Deshpande, 2014 MLJ 339 : 2014 I CLR 878 and MSRTC, Beed v/s Syed Saheblal Syed Nijam, 2014 (III) CLR 547 : 2014(4) Mh.L.J. 687).

4. By the impugned award, the Labour Court has granted relief to the respondent despite the dismissal dated 01.07.1995 having been challenged by way of reference in the year 2012. The respondent is said to

have retired upon attaining the age of superannuation in 2006.

5. Issue notice before admission to the respondent, returnable on 23.03.2016. Till then, the respondent shall not initiate steps for seeking execution of the impugned award.”

5. It is undisputed that the Labour Court has set aside the enquiry as being vitiated. It is equally undisputed that the petitioner has not reserved its right to conduct a de novo enquiry (if the departmental enquiry is set aside) in its written statement. As such, considering the law laid down by the Five Judges' Bench of the Honourable Supreme Court in the matter of Karnataka State Road Transport Corporation Vs. Laxmidevamma & another [2001 (II) CLR 640], the petitioner cannot, therefore, conduct a *de novo* enquiry before the Labour Court.

6. It is in this backdrop that the Labour Court has concluded that the charges levelled against the respondent have not been proved before the Labour Court. On this Count, this petition need not be entertained.

7. Shri Wani, learned Advocate for the respondent has strenuously supported the grant of 50% backwages from the date of

dismissal 1.7.1995, till his superannuation on 19.3.2006. The petitioner has contended that the respondent was silent as regards his dismissal from 1.7.1995 till he raised an industrial dispute in 2011. The demand notice was issued on 22.11.2011, which is even 5 years after he stood retired. Yet the Labour Court has granted backwages to the extent of 50%.

8. I find that the respondent did not question his dismissal for 16 years. Even after his retirement, he was silent for 5 years. The Honourable Supreme Court in the matter of J.K. Synthetics Ltd. vs. K.P. Agrawal and Anr. [(2007) 2 SCC 433], has observed in paragraphs 18 and 19 that the employee would be entitled to backwages only if he steps into the witness box and leads evidence that he was unemployed, he made efforts for an alternate employment and he did not succeed in securing any such employment. In the instant case, the respondent challenged his dismissal much after his retirement and hence, by his own conduct, he has disentitled himself from claiming backwages. By the impugned award, the Labour Court has virtually rewarded him for causing delay of 16 years in raising an industrial dispute.

9. Considering the above, this petition is partly allowed. The direction issued by the Labour Court in Clause 3 of the impugned order is quashed and set aside to the extent of the payment of

backwages. The direction to the petitioner to pay all retiral benefits by considering that the respondent is in continuous service till his retirement on 19.3.2006, is sustained.

10. As such, the retiral benefits of the respondent, including gratuity shall be calculated from the date of his joining duty till 19.3.2006 and the same shall be paid within a period eight weeks from today, failing which, the petitioner shall pay interest at the rate of 6% per annum on the amount of retiral benefits as well as gratuity from the date of the judgment of the Labour Court.

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

(RAVINDRA V. GHUGE, J.)

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