

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4773 OF 2016
WITH
WRIT PETITION NO.4774 OF 2016

The Manager,
Kedarnath Urban Co-operative Bank
Ltd., Latur

PETITIONER

VERSUS

Dilip S/o Ramchandra Deshpande,
Age-58 years, Occu-Retired employee,
R/o Renuka Nagar, Latur,
Tq. and Dist.Latur

RESPONDENT

Mr.A.N.Irpatgire, Advocate for the petitioner.
Mr.V.M.Humbe, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/05/2016

ORAL JUDGMENT :

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

2. The petitioner Bank, in the first petition, is aggrieved by the judgment and order dated 22/08/2014 delivered by the Labour Court by which Complaint (ULP) No.1/2013 filed by the respondent/employee has been allowed in part and the judgment of the Industrial Court dated 11/09/2015 by which its Revision (ULP)

No.31/2014 has been dismissed.

3. The petitioner in the 2nd petition, is also aggrieved by the judgment and order dated 11/09/2015 by which Revision (ULP) No.30/2014 filed by the respondent seeking full back wages has been allowed.

4. I have heard the learned Advocates for the respective sides at length.

5. Issue is as regards introduction of a new age of retirement by clause 13 of the Service Rules which have been approved by the competent authority in 2012. The age of retirement at 55 years was not the practice with the petitioner/Bank prior to the introduction of the said Rules. After the said rules were approved in 2012, the petitioner has retired the respondent w.e.f. 01/10/2012 on the basis of his attaining the age of superannuation at 55 years.

6. The respondent had, therefore, filed a ULP complaint before the Industrial Court. Under the Standing Orders applicable (BIR Act), the age of retirement was 58 years. The Labour Court, therefore, concluded that the newly introduced age of retirement which is

prejudicial to the interest of the existing employees cannot be given a retrospective effect. It was, thus, held that the said retirement amounts to an illegal retrenchment. However, the Labour Court did not grant back wages on the ground of “No work-No pay”.

7. The petitioner preferred its revision petition against the judgment of the Labour Court and the respondent followed suit in his revision petition for challenging the denial of back wages. The Industrial Court noted that the respondent could not be deprived of the back wages since at his age, unemployment was forced upon him. The Industrial Court, therefore, allowed the revision petition of the respondent by granting full back wages and dismissed the revision of the petitioner.

8. Though Mr.Irpatgire, learned Advocate for the petitioner has strenuously criticized the impugned judgment, I do not find that he could make out any ground on the basis of which the impugned judgments could be termed as being perverse or erroneous.

9. He has tendered across the bar a copy of an affidavit dated 11/12/2014 sworn by the respondent and tendered to the petitioner/Bank stating therein that he is willing to withdraw his

revision petition and the Management has agreed to withdraw its revision petition and hence he would give up his back wages. It is noteworthy that though this affidavit is dated 11/12/2014 and the original was tendered to the petitioner, same was not produced before the Industrial Court which decided the revision petitions on 11/09/2015. Similarly, since the petitioner did not withdraw its revision petition, the employee also did not withdraw his petition and as a consequence, both the parties, by their acts and conduct have not acted upon the said affidavit dated 11/12/2014.

10. Mr.Irpatgire forcefully submits that the respondent employee did not challenge the service rules under Item 1 of Schedule IV before the Labour Court. I find the said submissions to be fallacious since that is not the scope of Item 1 of Schedule IV.

11. Mr.Irpatgire has made a serious grievance about back wages having been granted to the respondent by the Industrial Court. His submissions would have been appreciated if it was a case of misconduct or a mis demeanor which led to the removal of the respondent. The facts in hand are peculiar. The respondent was 56 years old when he approached the Labour Court. At his age, even if he makes an attempt, it is a matter of speculation as to whether he

would have succeeded in getting employment considering that a large chunk of the population in this country comprises of young and energetic youth who are willing to take up a jobs. In my view, therefore, this ground cannot be pressed for depriving the respondent of the back wages.

12. In the light of the above, I do not find that the impugned judgment of the Labour Court to the extent of granting reinstatement and continuity in service and the judgment of the Industrial Court to the extent of granting back wages to the respondent/employee could be termed as being perverse and erroneous.

13. Both the petitions are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)