

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6558 OF 2003

1. The Superintending Engineer,
Mechanical Circle (U.S.),
Kolhapur.
2. The Executive Engineer,
Mechanical Division,
Tilarinagar, Dist. Kolhapur.
3. The Chief Engineer (Mechanical),
Irrigation Department,
Tryambak Road, Nasik. ... Petitioners

v/s

Shailendra Vasant Rao Pandare,
House No.268, A. Shivaji Peth, Kolhapur. ... Respondent

Mr.A.D. Kango, A.G.P. for the petitioner.

Mr.M.S. Topkar for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 14 JANUARY 2016

ORAL JUDGMENT:

By this petition, the Petitioner State challenges the orders passed by the Industrial Court, Kolhapur, dated 13 December 2001 and the order passed by the Labour Court, Kolhapur, dated 23 November 2000, dismissing the Revision filed by the Petitioners

and allowing the Complaint filed by the Respondent.

2. The Respondent filed Complaint (ULP) No.207 of 1993 in the Labour Court, Kolhapur. The Labour Court, after considering the evidence on record came to the conclusion that the Petitioners had engaged in an unfair labour practice and directed to continue the Respondent in service with continuity of service and to pay 50% back wages from 27 November 1992 to 6 February 1995. Revision Application No.223 of 2000 filed by the Petitioners and Revision Application No.226 of 2000 filed by the Respondent were dismissed by the Industrial Court by order dated 13 December 2001.

3. As regard the direction for continuation of the Respondent in service, the Respondent was terminated on 27 November 1992. He filed Complaint (ULP) No.27 November 1992. He filed Complaint on 26 July 1994 and by an interim order dated 6 February 1995, he was directed to be continued in service. From 6 February 1995 onwards the Respondent was continued in service. At the time of issuance of Rule in this petition on 30 September 2003, this Court, after recording that the Respondent had continued in service, did not grant any stay regarding services, however, granted interim relief in terms of payment of back wages.

4. Considering the above mentioned facts, I am not inclined to interfere with the direction by both the Courts below regarding the continuation of the Respondent in service.

5. As regard the payment of 50% of back wages for the above mentioned period is concerned, there is absolutely no discussion by both, the Labour Court as well as the Industrial Court, as to whether the Respondent was gainfully employed during this period. If the Respondent was gainfully employed during this period, he will not be entitled to back wages. It was incumbent upon both the Courts before directing the Petitioner State to pay back wages to the Respondent to consider the aspect of gainful employment of the Respondent. There is absence of any discussion in the decision of both the Courts and for lack of any assertion on the part of the Respondent regarding his gainful employment, the direction to pay back wages cannot be sustained.

6. Accordingly, the writ petition is partly allowed. The direction of the Labour Court of payment of 50% back wages to the Respondent by the Petitioner for the period from 27 November 1992 and 6 February 1995, which is confirmed by the Industrial Court, is quashed and set aside. The direction of the Labour Court and the Industrial Court to continue the Respondent in service with continuity, is not disturbed.

7. Rule is made absolute in above terms with no order as to costs.

(N. M. JAMDAR, J.)