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

WRIT PETITION NO. 11073 OF 2014

Shri Swami Vivekanand Shikshan Sansthechya
Sevakanchi Sahakari Patsanstha Maryadit. ... Petitioner.

V/s.

Kumari Deepa Narayan Jadhav. ... Respondent.

Mr. Meelan Topkar for the Petitioner.
Mr. Chetan G. Patil for Respondent 1.

CORAM : N.M. JAMDAR, J.

DATE : 23 FEBRUARY, 2016.

ORAL ORDER :-

The Labour Court, Kolhapur and the Industrial Court, Kolhapur, by allowing the Complaint filed by the Respondent and dismissing the Revision filed by the Petitioner, have directed the Petitioner to reinstate the Respondent in service with full back wages.

2. The case of the Respondent is that the Respondent was initially appointed as a Junior Clerk on 16.10.1996. She was issued orders from time to time. She submitted an application for maternity leave on 31 October 1998. As per the instructions of the

Secretary of Sanstha, the Respondent gave charge to one Mrs. S.A. Patil. After the maternity leave was over, when she went to join her duties, she was not allowed to join the duties, which amounted to oral termination. In the written statement stand taken by the Petitioner is that it is incorrect to state that the Respondent worked from 16.10.1996 till the date of termination.

3. The learned Counsel for the Petitioner submitted that the last date as per the appointment orders issued to the Respondent was 13 June 1997. Thereafter, by the Resolution dated 1 July 1997 the Respondent was continued on contract basis. He submitted that there was no question of any termination of the services of the Respondent as the appointment itself came to an end on 13 June 1997. Firstly, this contention as advanced does not find place in the written statement. The written statement proceeds on denial and it is extremely sketchy. Secondly, the Resolution dated 1 July 1997 itself which is placed on record by the Petitioners states that the Respondent continued in service. It is also not explained that if the Respondent was not in service, why would she make an application for grant of maternity leave, which was acknowledged, and why the charge will be given to the other employee. Therefore, this case put up by the Petitioner has been rightly disbelieved by both the Courts below. There is no perversity in this conclusion. The finding is therefore that after the Respondent went to resume duties after her maternity leave, she was not allowed to do so, which amounted to oral termination.

4. The learned Counsel for the Petitioner then submitted that in view of the clear admission of the Respondent that the Respondent did not make any effort to find an employment, grant of full back wages was incorrect. Reliance was placed on the decision of the Apex Court in the case of *Asst. Engineer, Rajasthan Development Corporation and Anr. V/s. Gitam Singh [(2013) 1 CLR 817]*. The learned Counsel for the Respondent submitted that this stray statement appearing in the cross-examination is obviously a mistake. He submitted that relevant pleadings regarding unemployment and efforts were made in the complaint as well as in the evidence.

5. If the evidence of the Respondent is seen as a whole, she has asserted that she was wrongfully turned away when she went to report from duty. She asserted that since 3 February 1999 after she was removed from service, she is unemployed and inspite of making all efforts, she has not found any job. She has then stated that her husband works on part time basis and does not get full salary and therefore, she is in need of employment and is entitled to the wages in the meanwhile. In the cross-examination she has stated that she has not produced any documentary evidence regarding making an effort. Thereafter, one line appears that she has not made any effort. If the evidence of the Respondent is taken in totality, the contention of the learned Counsel for the Respondent that this statement is a mistake

appears to be plausible. It is also settled law that if termination is found to be bad, generally an employee is entitled to full back wages unless the criteria for depriving her of the same are satisfied. I am of the opinion that considering the totality of the evidence, the Respondent had sufficiently demonstrated her right to full back wages.

6. The maternity Benefit Act, 1961 is a beneficial piece of legislation and its object is to ensure security of tenure for the working woman. If the conduct such as one exhibited by the Petitioner of turning away the employee after her maternity leave, is not firmly dealt with, it will encourage other employers to defeat the object of the Act. It is therefore necessary to impose costs to discourage and curtail such activities.

7. Accordingly, the Writ Petition is rejected. The Petitioner shall pay cost of Rs.10,000/- to the Respondent within period of four weeks from today. The Respondent will be entitled to withdraw the amount of back wages which are deposited by the Petitioner in this Court.

(N.M. JAMDAR, J.)