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

WRIT PETITION NO. 1115 OF 2006

Mr. Balaso Shantappa Nagave. ... Petitioner.

V/s.

The Managing Director,
Deshbhakta Ratnappa Kumbhar
Sahakari Sakhar Karkhana Ltd. ... Respondent.

Ms. Saloni Ghule i/b. S.A. Sawant for the Petitioner.
Mr. M.S. Topkar for Respondent 1.

CORAM : N.M. JAMDAR, J.

DATE : 06 JANUARY, 2016.

ORAL JUDGMENT :-

The Petitioner challenges the orders passed by the Labour Court, Kolhapur dated 10 March 2005 and the order passed by the Industrial Court, Satara dated 27 October 2005 dismissing the complaint and the Revision Application respectively.

2. The Petitioner was working as a Clerk with the Respondent – Karkhana. He joined the services in the year 1969. he was transferred to Vasagade Irrigation Scheme on 19.4.1988. He submitted an application for medical leave which was not

accepted. The Petitioner thereafter sought extension of leave from 3 May 1988 to 20 May 1988 which was also not granted. He made an application for cancellation of the transfer order. The Petitioner was served with a show cause notice on 5 August 1988 and a charge-sheet was issued on 1 October 1988. The Petitioner filed a Complaint (ULP) No. 213 of 1989 in the Labour Court, Kolhapur. In this Complaint the Petitioner contended that from 1 September 1989 he was not allowed to join his duties and was orally terminated. The Petitioner accordingly sought reinstatement in service with full back wages. The Respondents filed their say and contended that the Petitioner remained absent on his own accord having lost interest in work, in view of his transfer and before the proceedings against him could be concluded, the complaint has been filed.

3. The complaint was dismissed on 6 August 2001 as not maintainable, being barred by limitation. The complainant preferred a Revision Application No. 61 of 2001 which was allowed and the complaint was restored. Thereafter, the Labour Court, by order dated 10 March 2005, dismissed the complaint on merits. The Revision (ULP) No. 52 of 2005, filed by the Petitioner was rejected by the Industrial Court, Satara. Both the Courts found that the conduct of the Petitioner was such that the case of the Respondents that the Petitioner had lost interest in service stand proved. These orders have been challenged in the present Petition.

4. I have heard the learned Counsel for the parties.

5. Ms. Ghule, learned Counsel for the Petitioner submitted that the aspect of oral termination of the Petitioner has not been considered in its proper perspective by both the Courts. He submitted that the Petitioner was not allowed to join duties and the oral termination of the Petitioner who had worked for 20 years and who had blemishless service was illegal. According to the learned Counsel for the Petitioner, in view of this illegal termination, the Petitioner was entitled to reinstatement with full back wages. Mr. Topkar, the learned Counsel for the Respondents on the other hand submitted that the age of retirement in the Respondent – Karkhana is 58 years and the Petitioner attained the age of superannuation on 31 December 2002. He submitted that the Respondent had taken a categorical stand in their say that the services of the Petitioner were never terminated and inspite of this position, no effort was made by the Petitioner to seek any direction till the date of his superannuation that is for period of 11 years.

6. The case of the Petitioner is that he was not allowed to join duties, while it is case of the Respondents that the Petitioner having been transferred was not interested in service and voluntarily left the services. This aspect is a pure question of fact. Both the Courts have recorded a finding of fact against the Petitioner. To ascertain whether this conclusion is perverse or

otherwise, the conduct of the Petitioner is also one of the relevant factor. Nowhere in the complaint there is any assertion as to the reason why the Respondent would orally terminate and not allow the Petitioner to join the services. On the other hand, the reason for voluntarily leaving the services by the Petitioner is indicated by the Respondents that he was not interested in serving at the transferred place. The Petitioner had made repeated efforts not to join at the transferred place. Firstly by asking for leave on medical grounds and then for cancellation of transfer. This conduct of the Petitioner lends credence to the theory of the Respondents that the Petitioner was not interested in joining at the transferred place. Thus, the assertion of the Respondents that the Petitioner was not interested to work at the transferred place cannot be considered as fanciful and has been rightly accepted by the Courts below.

7. The next factor to be considered is that inspite of the Respondents taking a stand in their written statement that the services of the Petitioner were not terminated and the written statement was filed in the year 1989, the Petitioner did not make any efforts to seek any direction to the Respondents to take the Petitioner back in service. Normal course of conduct, faced with such stand in the written statement, would be to immediately seek a direction to join the duties. No reason is given as to why for 11 years no such effort was made by the Petitioner. This conduct also indicates that it is the Petitioner who was not interested and the

litigation is instituted only to claim back wages. In view of these two factors, the finding on the assessment of evidence rendered by both the Courts below that the Petitioner left the services, is a possible view to be taken. The scope of writ jurisdiction to interfere with the concurrent finding of fact is limited. Merely because on assessment of evidence, another view is possible, is no ground to interfere in the writ jurisdiction.

8. The Respondents have filed an affidavit dated 14 February 2014 in which it is stated that the Petitioner is entitled to amount of Rs.14,798/- as gratuity and the provident fund of Rs.16,214/-. The Petitioner will be entitled to receive these amounts.

9. In view of the above discussion, no interference is warranted in the impugned order. The Writ Petition is accordingly dismissed. Rule discharged. No order as to cost.

10. The Respondents will pay the amount of gratuity if not already paid to the Petitioner within period of four weeks. If the Petitioner makes an application to the Provident Fund Authorities for withdrawal of his provident fund, the same will be processed by the Provident Fund Authorities expeditiously.

(N.M. JAMDAR, J.)