

Sequeira

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

WRIT PETITION NO. 4126 OF 2001

Chairman / Secretary

Krishi Utpan Bazar Samiti, Pune.

.. Petitioner

Vs.

Shri Prakash Ganpat Pawar.

.. Respondent

Mr.Ramesh D.Soni i/b Mr.V.R.Kasbe, for the Petitioner.

***CORAM: N.M. JAMDAR, J.
Friday, 26 February 2016.***

PC. :

The Petitioner-Agricultural Produce Market Committee of Pune has approached this Court by way of this Writ petition challenging the order passed by the Labour Court, Pune on 6 October 2000 directing the Petitioner to reinstate the Respondent with full back wages.

2. Respondent was working with the Petitioner as a carpenter. A dispute was raised by the Respondent in respect of his alleged termination with effect from 29 June 1988. According to the Respondent he was terminated from service, while it was the case of the Petitioner that the Respondent was in the habit of remaining absent and abandoned the services; from the year 1980 he used to remain absent frequently. He was also given a show-cause notice for absenteeism. The Labour Court came to the conclusion that the Petitioner had not proved its case and there was no

abandonment of service but wrongful termination and passed the impugned order.

3. Rule was issued in this petition on 22 July 2002. Interim relief was granted only in terms of back wages. Before issuing rule, notice before admission was issued. Yet, at the time of issuing rule, Respondent did not remain present. Thereafter throughout the proceedings, inspite of service, Respondent has not cared to appear and defend the proceedings.

4. The learned counsel for the Petitioner has placed on record an affidavit tendered by the Respondent dated 1 April 2006 wherein Respondent requested the Petitioner to take him back in service and he was ready to fore-go his back wages and seniority. He states that due to some personal difficulty he could not approach the Petitioner earlier. The learned counsel has also placed on record a letter given by the Petitioner tendered in the year 2010 whereby the Respondent resigned from services. Thus the Respondent, six years after the impugned order went to seek benefit thereof and then left after serving for some time.

5. The issue to be considered in the petition is whether the Respondent abandoned his services or not. The manner in which the Respondent has conducted himself after the impugned order lends credence to the assertion of the Petitioner that the Respondent was never interested in service. The Petitioner had relied upon a letter issued by the Respondent himself, which was exhibited, to show that the Respondent was not interested in

service. The Labour Court has brushed aside this evidence on the ground that it is not sufficient to show that the Respondent abandoned his services. I have gone through the impugned order. The Labour Court has drawn an erroneous calculation that the Respondent had not abandoned the services. Taking into consideration the conduct of the Respondent from the year 1980 to 1986, and even after the order passed by the Labour Court, the assertion of the Petitioner that the Respondent was not interested in service and had abandoned it will have to be accepted.

6. In the circumstances, there is no option but to quash and set aside the impugned order. Accordingly rule is made absolute in terms of prayer clause (a), which is as follows-

'a). That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction under Articles 226 and 227 of the Constitution of India calling for the record pertaining to the impugned Award dated 6.10.2000 passed in Reference IDA No.244 of 1992 at Exh.D hereto and after scrutinizing the same further be pleased to quash and set aside the same'.

7. No order as to costs.

(N.M.Jamdar, J.)