

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

WRIT PETITION NO.11343 OF 2011

**Shri. Tanaji Baburao Tanugade
Age 40 years, R/O Kanchanwadi,
Tal. Karveer, Dist. Kolhapur.**

..Petitioner

Versus

**1. The Manager Kolhapur
District Central Co-op. Bank
Ltd., Head Office, Kolhapur.**

**2. Member, Industrial Court,
Kolhapur.**

..Respondents

**Shri. Abhay Nevagi a/w Ms. Prerna Patil i/by Abhay Nevagi &
Associates for the Petitioner.**

Shri. M. S. Topkar for the Respondent No.1.

**CORAM : R. M. SAVANT, J.
DATE : 16th SEPTEMBER, 2016**

ORAL JUDGMENT

1 The writ jurisdiction of this Court is invoked against the judgment and order dated 18.10.2011 passed by the Learned Member of the Industrial Court, Kolhapur, by which order, the Revision Application (ULP) No.31 of 2010 came to be allowed and resultantly, the judgment and order dated 03.02.2010 passed by the Learned Member of the Labour Court, Kolhapur came to be set aside.

2 The facts giving rise to the filing of the above Writ Petition can in brief be stated thus :-

The Petitioner herein is the original Complainant who has filed Complaint (ULP) No.69 of 1999 invoking items 1(b) and (f) of Schedule IV of the MRTU & PULP Act, 1971 (for short “the said Act”). The Respondent No.1 herein is the Kolhapur District Central Co-operative Bank and is a society registered under the Maharashtra Co-operative Societies Act. The Petitioner was working with the Respondent No.1 on daily wages. It was the case of the Petitioner that he was working with the Respondent No.1 from May 1996 to September 1998 when his services came to be orally terminated. It was his case that since he had completed more than 240 days of service in a calender year, he had become permanent, and therefore his services could not be terminated without following the due process of law and without payment of compensation as contemplated by Section 25(f) of the Industrial Disputes Act (for short “the ID Act”). The Petitioner therefore prayed for a declaration of an unfair labour practice being committed by the Respondent No.1 and for his reinstatement with continuity of service.

3 The Respondent No.1 filed its written statement. It was the case of the Respondent No.1 that the Petitioner was appointed on daily

wages as and when work was available. It was the case of the Respondent No.1 that the wages were paid to the Petitioner at the end of each week and by voucher. It was further the case of the Respondent No.1 that since he was appointed on daily wages, question of termination of his services did not arise. The Respondent No.1 denied that the Petitioner has completed 240 days or more in a calendar year. It was the case of the Respondent No.1 that the Petitioner was not appointed through proper channel i.e. employment exchange, no sanction of the co-operative department was taken and therefore a back door entry cannot be permitted. The Respondent in its written statement sought to rely upon the instructions of the NABARD issued vide its order dated 15.07.2009 which instructions were in respect of the recruitment in all the District Central Co-operative Banks. The Respondent No.1 had therefore sought dismissal of the Complaint.

4 On the basis of the pleadings of the parties, the Learned Member of the Labour Court framed the issues, amongst which were issues, which were to the following effect :-

- i) Whether the services of the Complainant have been terminated ?
- ii) Whether the termination of service of the Complainant is legal and proper ?

The parties led evidence in respect of their respective assertions. The Petitioner led the evidence of one Pandurang Krishnaji Bhanage who was the Branch Manager of the concerned Branch wherein the Petitioner was working at the relevant time, whereas the Respondent No.1 had led the evidence of one Ranjit Marutrao Bagal who was the Assistant Manager in its legal department. It seems that prior to the framing of the issues, the Petitioner had filed an application for amendment of the Complaint which amendment was to the effect that to avoid a situation where the Petitioner would be completing 240 days of service, the Petitioner was shown as working in the names of his brothers whose names were mentioned in the said amendment application. The said amendment application came to be allowed by the Labour Court and the factum of the Petitioner having completed 240 days of service in a calender year was accordingly incorporated in the Complaint.

5 Now coming to the evidence led on behalf of the parties. In so far as the evidence of Shri. Pandurang Bhanage is concerned, it has come in his evidence that the Petitioner was working with the Respondent No.1 between the years 1996-1998. It has further come in his evidence that the selection is made at the head office level and thereafter the employees are assigned to the various branches and offices of the Respondent No.1.

6 In so far as the evidence of Shri. Ranjit Bagal is concerned, it has come in his evidence that in respect of persons who are daily wagers, their attendance is maintained by the Respondent No.1 Bank. It has further come in his evidence that for the years 1996-1997 and 1998 such attendance registers were maintained. It has further come in his evidence that for the year 1996-1997 and 1998 the record in respect of wages paid to the employees is maintained. It has further come in his evidence that in such attendance record the days when a workman has attended and the payment made to him is recorded.

7 In the light of the evidence of Shri. Ranjit Bagal, the Petitioner had filed application Exh.21 in the Labour Court for a direction to be issued to the Respondent No.1 to produce the registers of the daily wagers for the period May 1996 to September 1998. In spite of such directions being issued, the Respondent No.1 did not choose to produce the said record and the justification given for the same was that the record has not been produced since the Petitioner's name is not appearing in the said record.

8 The Labour Court adjudicated upon the said Complaint and by its order 03.02.2010 has allowed the said Complaint by answering the issues against the Respondent No.1. The Learned Judge of the Labour

Court on the basis of the evidence of Shri. Pandurang Bhanage and Shri. Ranjit Bagal came to a conclusion that the Petitioner had worked for 240 days and accordingly recorded a finding of fact. The Learned Judge of the Labour Court drew an adverse inference against the Respondent for not producing the registers though directed vide order passed on Exh.21. The Learned Member observed that since it was the case of the Respondent No.1 that the name of the Petitioner was not appearing in the registers, it was necessary on the part of the Respondent No.1 to produce the said registers. The said registers would have been the best evidence for the Respondent No.1 to controvert the case of the Petitioner that he had worked for more than 240 days in a calender year. The Learned Member has held that since the registers were not produced, it would have to be held that there was material in the said registers which was not conducive to the Respondent No.1 and hence the registers were not produced. The Learned Judge of the Labour Court resultantly held that the termination of the services of the Petitioner was illegal without following the procedure and therefore directed the reinstatement of the Petitioner and instead of awarding backwages awarded compensation of Rs.50,000/- in lumpsum.

9 The said judgment and order dated 03.02.2010 passed by the Labour Court was taken exception to by the Respondent No.1 by way

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of a Revision filed under Section 44 of the said Act which Revision was numbered as Revision Application No.31 of 2010. The said Revision came to be allowed by the Learned Member of the Industrial Court and resultantly, the judgment and order dated 03.02.2010 passed by the Labour Court was set aside and the Complaint was dismissed. The gist of the reasoning of the Industrial Court was that the finding of the Labour Court that the Petitioner had worked for 240 days was perverse. The Learned Member of the Industrial Court whilst recording the said finding has adverted to the evidence of Shri. Pandurang Bhanage but has not referred to the evidence of Shri. Ranjit Bagal who was in fact the witness of the Respondent No.1. The Learned Member of the Industrial Court observed that the Labour Court misread the evidence and has drawn a wrong inference by believing the story of the Petitioner. The Learned Member of the Industrial Court observed that the Labour Court has wrongly shifted the burden on the Respondent No.1 just because it did not produce the documents. The Learned Member of the Industrial Court further observed that the entry of the Petitioner was a back door entry, dehors the rules and therefore the order of reinstatement could not be granted. The Learned Member of the Industrial Court accordingly allowed the Revision by judgment and order dated 18.10.2011. It is the said judgment and order passed by the Industrial Court which is taken

exception to by way of the above Petition.

10 **Submissions of Shri. Abhay Nevagi the Learned Counsel**
appearing on behalf of the Petitioner :-

A) That the Industrial Court in allowing the Revision has exceeded its jurisdiction under Section 44 of the said Act by re-appreciating the evidence and upsetting the finding of fact recorded by the Labour Court in respect of the Petitioner having completed 240 days of service in a calender year. Reliance is placed on the judgment of a Learned Single Judge of this Court dated 21/22.01.2015 in Writ Petition No.5907 of 2005 in the matter of Agricultural Produce Market Committee Arjuni Moregaon Vs. Ashok S/o Danaji Hatzode and Division Bench judgment of this Court reported in (1996)-I LLJ 494 Bom. in the matter of Vithal Gatlu Marathe Vs. Maharashtra State Road Transport Corporation and others.

B) That the evidence of Shri. Pandurang Bhanage and Shri. Ranjit Bagal if read together, unequivocally lead to a conclusion that the Petitioner had worked for 240 days in a calender year and therefore his services could not be discontinued without following the procedure.

C) That the Labour Court was right in drawing an adverse inference

against the Respondent No.1 for not producing the attendance and wage registers. The Learned Counsel lastly contended that the Petitioner is not interested in payment of any compensation but is only interested in reinstatement.

11 **Submissions of Shri. Mr. M. S. Topkar on behalf of the Respondent No.1 :-**

I) The Learned Counsel would seek to support the impugned order passed by the Industrial Court, that the finding recorded by the Labour Court that the Petitioner had worked for 240 days is perverse.

II) The Learned Counsel however fairly conceded that the Industrial Court has not taken into consideration the specific evidence of Shri. Ranjit Bagal in respect of the maintenance of the registers.

III) The Learned Counsel also fairly conceded that though the attendance registers were maintained of daily wagers, such registers were not produced before the Labour Court. The Learned Counsel left it to this Court regarding final relief to be granted in the above Petition.

Consideration

12 Having heard the Learned Counsel for the parties, I have considered the rival contentions. Since it is the contention of the Learned Counsel for the Petitioner Shri. Abhay Nevagi that the Industrial Court has exceeded its jurisdiction, in support of which reliance was placed on the judgment of a Division Bench of this Court in *Vithal Gatlu Marathe's* case (*supra*) and the judgment of a Learned Single Judge of this Court in *Agricultural Produce Market Committee Arjuni Moregaon's* case (*supra*), it would be necessary at the outset to refer to the said judgments. In so far as the judgment of the Division Bench of this Court in *Vithal Gatlu Marathe's* case (*supra*) is concerned, it has been held by the Division Bench of this Court that in exercise of the supervisory jurisdiction under Section 44 of the said Act, the Industrial Court cannot appreciate or re-appreciate the material on record. In the facts of the said case, where the Industrial Court had set aside the findings of the Labour Court by overturning the said findings and the decision of the Labour Court the Division Bench set aside the order of the Industrial Court and confirmed the decision of the Labour Court. The Learned Single Judge in *Agricultural Produce Market Committee Arjuni Moregaon's* case (*supra*) has reiterated the position in law as regards the revisionary jurisdiction under Section 44 and has held that the revisionary jurisdiction of the Industrial Court cannot be invoked for overturning a finding of fact even if the same

is erroneous. Hence, in so far as the revisionary jurisdiction under Section 44 is concerned, a finding of fact recorded by the Labour Court cannot be upset by the Industrial Court just because another view is possible to be taken in the same set of facts. The facts of the instant case would now have to be seen in the said context. In the instant case, as indicated above, the case of the Petitioner was that he had worked for more than 240 days till his services were orally terminated in September 1998. In the background of the said case, the evidence of Shri. Pandurang Bhanage who was the witness of the Petitioner and the evidence of Shri. Ranjit Bagal assumes importance. In so far as the evidence of the said two witnesses are concerned, gist of the same has already been extracted in the earlier part of this judgment. It is on the basis of the evidence of Shri. Ranjit Bagal that the Petitioner had filed the application Exh.21 for a direction to the Respondent No.1 to produce the registers maintained in respect of the daily wagers as Shri. Ranjit Bagal in his evidence in terms has stated that such registers are in fact maintained by the Respondent No.1. In spite of an order passed on the application Exh.21 filed by the Petitioner, the said registers were not produced by the Respondent No.1 and the justification given was that since the name of the Petitioner was not appearing hence the said registers were not produced. The said explanation can therefore be said to be specious and has been merely

given to keep away a document from the Court. Since it was the case of the Respondent No.1 that the name of the Petitioner was not appearing in the said registers, the best evidence for the Respondent No.1 would therefore have been the said registers. Since the Respondent No.1 had not produced the said registers, the Labour Court was within its right to draw an adverse inference against the Respondent No.1 on account of the non-production by presuming that the contents of the said registers might not be conducive to the Respondent No.1. The Learned Judge of the Labour Court has therefore on the basis of the material on record has recorded a finding of fact that the Petitioner had worked for more than 240 days in a calendar year and therefore the termination of his services without following the procedure was illegal. The Labour Court deemed it appropriate to grant reinstatement with lumpsum compensation.

13 On the matter being carried to the Industrial Court, the Industrial Court embarked on an exercise of re-appreciating the evidence on record and thereafter has overturned the finding of the Labour Court. In the said process however the Industrial Court has only referred to the evidence of Shri. Pandurang Bhanage but has not, even in passing, referred to the evidence of Shri. Ranjit Bagal which in the context of the case of the Petitioner is the clinching evidence in so far as his case that he had worked for more than 240 days in a calendar year is concerned. The

Industrial Court also failed to appreciate that since the employer is in custody of the documents, it is for him to produce the said documents and if not produced, then an adverse inference is required to be drawn. Hence, the impugned order passed by the Industrial Court in the teeth of the parameters of the revisionary jurisdiction under Section 44 can be said to be an order passed in excess of jurisdiction. The Industrial Court was not entitled to re-appreciate the evidence much less in the manner it has done in the instant case by adverting to only the evidence of Shri. Pandurang Bhanage and not Shri. Ranjit Bagal.

14 In my view, therefore, the impugned order dated 18.10.2011 passed by the Industrial Court cannot be sustained. The same is required to be quashed and set aside and is accordingly quashed and set aside. Resultantly, the order dated 03.02.2010 passed by the Labour Court would stand confirmed. However, since the Learned Counsel for the Petitioner has submitted that the Petitioner is only interested in reinstatement and not the lumpsum amount and since the Learned Counsel appearing for the Respondent No.1 Mr. M. S. Topkar in all fairness has left it to this Court as regards the final relief to be granted to the Petitioner. In the facts and circumstances of the case, the grant of the lumpsum amount of Rs.50,000/- by the Labour Court is set aside however the order of the Labour Court granting reinstatement with

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continuity of service is confirmed. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]