

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3738 OF 1998

Devrao s/o Hari Kawade
At Post Kolhar, Taluka
Shrirampur, Dist.
Ahmednagar.

**.... PETITIONER/
[ORI. DEFENDANT]**

V E R S U S

Shrirampur Doodh Zilla
Madhyavarti Sahakari
Doodh Vyavasayik Sangh Ltd.

**.... RESPONDENT/
[ORI. PLAINTIFF]**

.....
Mr. A.S.Shelke, Advocate for Petitioner.
Mr. R.N.Dhorde, Sr.Counsel for Respondent.

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CORAM : P.R.BORA, J.

DATE OF JUDGMENT : 25th APRIL, 2017

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ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Perusal of the impugned order shows that the learned Labour Court though directed reinstatement of the

petitioner to the original post, relief of back-wages was refused. In paragraph 13 of the impugned order, learned Labour Court has observed thus,

" Now the question is remained about the back-wages. The workman has not entered into the witness box and has not lead any evidence that after termination during the idle period he was not having any income. At the same time, the first party has produced on record and it is proved by oral and documentary evidence that the workman is a member of the Pravara Sahakari Dudh Vyavasayik Sanstha Maryadit, Bahhaleshwar, Tal. Shrirampur, Dist. Ahmednagar and sending milk to the said Sanstha for selling. The first party has also produced 7/12 extract of the land vide Exh. C-42 and proved that 7 Acres of land stands in the name of the workman along with his brother. It is disclosed from 7/12 extract that the workman is taking crops of Bajara and Onion, etc. From the documentary evidence it is proved that the workman is having agriculture income from the land as well as selling milk to the said co-operative society. For these reasons, since the workman is having income

about two sources during his idle period. He is not entitled for the relief of backwages. For these reasons, I record my findings that the workman is entitled for the relief of reinstatement without continuity in service and backwages.

3. Mr. Shelke, learned counsel for the petitioner sought to canvass that for the reasons as assigned by the Labour Court, the relief of back-wages could not have been refused. I am, however, not convinced with the submissions so made. When there was no evidence and the workman did not enter into witness box, did not lead evidence and consequently did not prove that he was not gainfully employed in the intervening period, learned Labour Court has rightly refused the relief of back-wages. I, therefore, do not see any infirmity in the order of the Labour Court thereby refusing the back-wages to the petitioner. However, it appears to me that when the termination itself was held illegal and the reinstatement was directed, learned Labour Court ought to have granted the relief of continuity of service, which could not have cast any financial burden on the respondent/institution. I, therefore, deem it appropriate to grant the relief of continuity in service. Order accordingly.

4. With the observations as above, Writ Petition is partly allowed. Rule is made absolute in above terms.

[P.R.BORA, J.]

KNP/W.P. 3738.1998 - [J]