

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

Writ Petition No. 04110 of 1997

District : Latur

Maharashtra Institute of Medical
Science and Research, Latur,
Medical College,
Through its Principal,
Ambajogai Road, Latur.

.. Petitioner
(Original
respondent)

versus

1. Dnyaneshwar Nivrati Gharjale,
Age 43 years,
Occupation Agriculture,
R/o. Chikhali,
Taluka Ahmedpur,
District Latur.

.. Respondents
(No.01 -
Original
complainant)

2. Learned Judge of the
Labour Court, Latur,
District Latur.

.. Respondent
nos.02 & 03
deleted.

3. Learned Member of the
Industrial Court,
at Solapur.

With

Writ Petition No. 04112 of 1997

District : Latur

Maharashtra Institute of Medical
Science and Research, Latur,
Medical College,
Through its Principal,
Ambajogai Road, Latur.

.. Petitioner
(Original
respondent)

versus

1. Udhav Pandurang Oval,
Age 27 years,
Occupation Agriculture,

- R/o. Naigaon,
Taluka Kallam,
District Osmanabad.
2. Learned Judge of the
Labour Court, Latur,
District Latur.
3. Learned Member of the
Industrial Court,
at Solapur.
- .. Respondents
(No.01 -
Original
complainant)
- .. Respondent
nos.02 & 03
deleted.

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Mr. R.K. Ashtekar, Advocate, for the petitioner.

Mr. Subhash V. Mundhe, Advocate, for respondent no.01.

Respondent nos.02 and 03 deleted.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 24TH FEBRUARY 2017

ORAL JUDGMENT :

01. In both these petitions, the petitioner - Management is aggrieved by the judgment of the Labour Court dated 12.08.1997 by which Complaint (ULP) No. 21/1994 and Complaint (ULP) No. 19/1994 have been allowed. Both the respondents - complainants, Dnyaneshwar s/o. Nivrati Gharjale and Udhav s/o. Pandurang Oval have been granted reinstatement with continuity and back wages.

02. I have heard the strenuous submissions of Shri Ashtekar, learned Advocate for the petitioner - Management and with his assistance, I have gone through the grounds raised in the memo of the

petitions. I have heard Shri Mundhe, learned Advocate appearing on behalf of the original complainants.

03. Respondent nos.02 and 03 in both these petitions are the Labour Court and the Industrial Court. Hence, respondent nos.02 and 03 stand deleted from the proceedings.

04. There is no dispute that the petitioner is a private industry and is covered by the ratio laid down by the Hon'ble Apex Court in the case of **Banglore Water Supply and Sewerage Board Vs. A. Rajappa and others** [AIR 1978 SC 548]. The model standing orders are applicable to the petitioner - establishment. Standing order 4C provides for deemed confirmation in service after completing 240 days in continuous employment in a period of 12 calendar months preceding the date of reference i.e. the date of termination. The respondents - complainants have been terminated from 08.03.1994 and 27.04.1994, respectively.

05. The subsequent events that had occurred during the pendency of these petitions cannot be ignored. This Court had granted interim relief only to the extent of continuity and back wages. Consequentially, these respondents were reinstated in service.

06. Shri Ashtekar, learned Advocate for the

petitioner - Management, fairly submits that respondent - Udhav s/o. Pandurang Oval has been working from 1990 and is still in employment today. Dnyaneshwar s/o. Nivrati Gharjale, who had also joined in 1990, has voluntarily resigned in 2008. These facts are confirmed by Shri Mundhe, learned Advocate for the respondents - original complainants.

07. In the light of the contentions of Shri Ashtekar and the grounds raised, I have gone through the record available and the impugned judgments of the Labour Court as well as the Industrial Court. By the judgment of the Industrial Court dated 11.09.1997, the revision petitions filed by the petitioner - Management against both these respondents have been dismissed.

08. The issue before the Labour Court was as regards non-compliance of Section 25F of the Industrial Disputes Act, 1947 while terminating the services of the complainants. Dnyaneshwar Gharjale was engaged as a Clerk and Udhav Oval was engaged as a Laboratory Attendant. Based on the oral and documentary evidence adduced before the Labour Court, it was conclusively proved that they have been working continuously and without interruptions. It was also proved that the Head of the Departments had issued certificates indicating that these two original complainants were sincerely performing their duties.

09. The petitioner had taken a stand that both the respondents had abandoned the employment. It cannot be ignored that after their oral terminations on 08.03.1994 and 27.04.1994, both these respondents had promptly filed their complaints before the Labour Court. This indicates that the respondents preferred their complaints with promptitude. Presumption of abandonment on account of alleged absence over a short period cannot be sustained. So also, in catena of judgments, the Hon'ble Apex Court as well as this Court has concluded that abandonment rests on the charge of unauthorized absence. Unless such unauthorized absence is proved, the theory of abandonment cannot be accepted. The only exception could be that an employee is not reporting for duties for years together and there could be no other presumption than abandonment. In the instant case, the respondents were not absent for years together.

10. In the light of the above, I do not find that the impugned judgments of the Labour Court as well as the Industrial Court could be termed as being perverse or erroneous.

11. Respondent - Dnyaneshwar Gharjale is not in employment having resigned. Respondent - Udhav Oval is still working. Back wages have been granted by the Labour Court along with continuity. It is settled law that if the termination is rendered illegal and unsustainable and if the employee deserves reinstatement in service, continuity of

service has to be granted. The issue of back wages depends upon circumstances in each case.

12. In the present case, the petitioner is a privately owned Medical College. It is informed that it has several Medical Colleges and Engineering Colleges all over the State and is widely regarded as an institution which operates several Engineering and Medical Colleges. In this backdrop, considering the law laid down by the Hon'ble Apex Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others** [(2013) 10 SCC 324], I find that the order of the Labour Court granting back wages and which is sustained by the Industrial Court, cannot be faulted.

13. Shri Ashtekar submits that in so far as respondent - Dnyaneshwar Gharjale is concerned, all his legal dues have been paid. Needless to state, since the impugned judgments have been sustained, the petitioner would be obliged to calculate the amount of back wages to be paid to these respondents from the date of their termination till the date of their reinstatement and accordingly make the said payment within a period of 08 (eight) weeks from today. Since respondent - Dnyaneshwar Gharjale has resigned, he would be entitled for retiral benefits which the petitioner would pay within the said period of 08 (eight) weeks, if not already paid.

14. Shri Mundhe submits that due to the pendency

of these two petitions, the respondents have been deprived of their annual increments and they are serving on paltry wages. This aspect being beyond the proceedings before this Court, I leave it open for the respondents to deal with and in the event, they have any grievance, they would be at liberty to take recourse to the remedy available in law.

15. Both these petitions are, therefore, dismissed. Rule is discharged.

(Ravindra V. Ghuge)
JUDGE

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