

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

WRIT PETITION NO.2929 OF 1998

Mahatma Phule Krishi Vidyapeeth,
through Oil Seeds Specialist,
Near Hira Shiva Colony,
Old Highway, Nimkhedi Road,
Jalgaon – 425 001.

... **PETITIONER**
(Org. Ist party
employer)

VERSUS

1. Devidas s/o. Shankar Koli,
Age: 25 years, Occ: Service,
R/o. Jalgaon, Dist. Jalgaon ... **RESPONDENT No.1**
(Org. Second Party
Workman)
2. Presiding Officer,
Labour Court, Jalgaon ... **RESPONDENT No.2**
(Court below)

WITH

WRIT PETITION NO.2930 OF 1998

Mahatma Phule Krishi Vidyapeeth,
through Oil Seeds Specialist,
Near Hira Shiva Colony,
Old Highway, Nimkhedi Road,
Jalgaon – 425 001

...**PETITIONER**
(Org. Ist party
employer)

VERSUS

1. Subhash s/o. Shrawan Koli,
Age:30 years, Occ: Service,
R/o. Mumrabad, Dist. Jalgaon ...
...RESPONDENT NO.1
(Org. Second Party
workman)

2. Presiding Officer,
Labour Court, Jalgaon

...RESPONDENT NO.2
(Court below)

Mr. Pradeep Shahane, Advocate for Petitioner/s;
Mr. GV Wani, Advocate for Respondent No.1

CORAM : P.R.BORA, J.

DATE : 18th April, 2017.

ORAL JUDGMENT:

1) In the present petitions the petitioners have questioned the order passed by the Labour Court, Jalgaon on 25th March, 1998 in Reference (IDA)Nos.23/1994 and 29/1994. Since the issues raised in both the petitions are common, I have heard the common arguments in both the petitions and I deem it appropriate to decide these petitions by common reasoning.

2) It was the contention of the workmen/employees that their services were orally terminated by the employer without complying the provisions and more particularly without giving any notice and without paying them any

compensation as provided under Section 25-F of the Industrial Disputes Act.

3) From the order passed by the Labour Court in the aforesaid Reference Applications, it is revealed that the Labour Court has held the termination of the workmen/employees bad for want of compliance of Section 25-F of the Industrial Disputes Act. It is further revealed that during pendency of the Reference Applications, the petitioner - employer reinstated the workmen. It is thus evident that the employer has accepted the order to the effect of reinstatement and has even acted upon the same before it was passed.

4) The only issue now needs to be considered is of 'back wages'. The Labour Court, while discussing the issue, as about award of back wages, has made the following observations,

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"6. Issue Nos. 1 to 6 : It is not disputed that the IInd party workman has completed 240 days in the preceding years from the date of his

termination as per the attendance sheet filed by the Ist party employer at Exh.C-6. Hence, I answer this issue in the affirmative. It is also not disputed that the IInd party workman has again reinstated in service w.e.f.16.6.94. It is also not disputed that the Ist party did not lead any oral evidence and also failed to prove how there was no-employer employee relationship in between the IInd party and Ist party. It is also not disputed that while terminating the services of the IInd party, the Ist party did not issue one month notice, notice pay and retrenchment compensation to the IInd party workman. It is the case of the Ist party that the IInd party workman at his own remained absent from duty, and hence it is not necessary to comply with the provisions of Sec. 25-F and Sec.25-C of the I.D. Act. I do not agree with the submission made by the learned counsel for the Ist party. It is held by our Hon'ble High Court in Faiz Ahamad Vs. Ismile Mohd. of Bombay & others FLS 1991(63) page 679.

"Even if the story of voluntary abandonment of service by workman put by the employer is accepted, it was incumbent upon the employer to hold an enquiry before treating the services as terminated on the ground of abandonment. In absence of such enquiry by the employer the termination of service cannot be held legal and valid."

Therefore, considering the non-

compliance of mandatory provisions of Sec.25-F of the I.D.Act, and relying in the aforesaid citation, I am of the considered opinion that the Ist party employer has orally terminated the services of the IInd party w.e.f. 3.9.93. Therefore, it is necessary to quash and set aside the oral order. Admittedly the IInd party workman has reinstated the workman in services 16.4.94. Considering the special circumstances of the case. I am of the considered opinion that the ends of justice would must if the IInd party workman is granted with the back wages @ 30% only."

5) From the discussion made by the learned Presiding Officer of the Labour Court, it is quite evident that the Labour Court has considered the fact that in the meanwhile period; the employees/workmen did not work with the employer. However, it has also been observed that the employees were forced to remain out of the employment, because they were not permitted to work with the employer.

6) Considering the fact that the employer has reinstated the employees/workmen during pendency of the Reference Applications, the

Reference Court found it appropriate to award 30% of the back wages. It does not appear to me that the Reference Court has committed any error in awarding the back wages to the aforesaid extent to both the employees involved in the present writ petitions. I am not convinced with the objections, which are raised by the petitioner-employer against the said part of the order. Both the writ petitions, being devoid of any substance, stand dismissed. Rule discharged.

(P.R.BORA)
JUDGE

bdv/