

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3041 OF 2002

The Chief Officer,
Nagar Parishad, Jalgaon
District Jalgaon.

..Petitioner

Versus

Dnyaneshwar Shridhar Kale
Age Major, Occ. Nil
R/o Plot No.527, Vithal Peth,
Jalgaon, District Jalgaon.

..Respondent

WITH
WRIT PETITION NO.3042 OF 2002

The Chief Officer,
Nagar Parishad, Jalgaon
District Jalgaon.

..Petitioner

Versus

Sanju Sitaram Pardeshi
Age Major, Occ. Nil
R/o Plot No. 14, Mayadevi Nagar,
Jalgaon, District Jalgaon.

..Respondent

WITH
WRIT PETITION NO.3051 OF 2002

The Chief Officer,
Nagar Parishad, Jalgaon
District Jalgaon.

..Petitioner

Versus

Rafiq Nazir Patel,
Age Major, Occ. Nil
R/o Plot No.193, Shivaji Nagar
Jalgaon, District Jalgaon.

..Respondent

WITH
WRIT PETITION NO.3059 OF 2002

The Chief Officer,
Nagar Parishad, Jalgaon
District Jalgaon.

..Petitioner

Versus

Sudhakar Narayan Sapkale
Age Major, Occ. Nil
R/o Samata Nagar Zopad Patti
Jalgaon, District Jalgaon.

..Respondent

WITH
WRIT PETITION NO.3060 OF 2002

The Chief Officer,
Nagar Parishad, Jalgaon
District Jalgaon.

..Petitioner

Versus

Santosh Chandulal Bhavsar,
Age Major, Occ. Nil
R/o Plot No.263, Shivaji Nagar
Jalgaon, District Jalgaon.

..Respondent

WITH
WRIT PETITION NO.5363 OF 2002

Jalgaon Municipal Council,
Through it's Chief Officer,
District Jalgaon.

..Petitioner

Versus

Vithal Dashrath Patil
R/o Savkheda, Post. Pimprala,
Taluka and District Jalgaon.

..Respondent

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Advocate for Petitioner : Shri P.R.Patil
Advocates for Respondents : Shri P.V.Barde
and Shri L.V.Sangit (in WP 5363/2002)

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 22, 2017
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ORAL JUDGMENT:-

1. Since the petitioner / erstwhile Municipal Council, which is now a Municipal Corporation, is petitioner in all the petitions and since respondent / workmen are identically placed, I have heard learned counsel for the respective sides in all these matters together, by consent.

2. In all these matters, the petitioner is aggrieved by the common award delivered by the Labour Court in the Reference Cases, by which, reinstatement with continuity and full backwages have been granted, except in the cases of Vitthal Dashrath Patil (Writ Petition No.6363 of 2002). One respondent Dnyaneshwar Shridhar Kale (Writ Petition No.3041 of 2002) is said to be subsequently terminated and is out of employment. One respondent Sanju Sitaram Pardeshi (Writ Petition No.3042 of 2002) has passed away. The said Writ Petition, therefore, abates.

3. I have considered the strenuous submissions of Shri Patil, learned Advocate for the petitioner and Shri Barde, learned Advocate on behalf of the respondents.

4. Shri Patil, primarily submits that in all these matters, an Industrial Dispute was raised under Section 2A after a passage of about 5 to 8 years. All these reference cases are, therefore, belatedly filed and hence are barred.

5. I do not find the said submissions to have any merit for the reason that the Industrial Disputes Act does not prescribe any limitation in so far as the raising of an industrial dispute as against the termination or dismissal is concerned. So also, the Honourable Apex Court has consistently held that since there is no limitation prescribed by the statute, even if an industrial dispute is raised after a period of 5 or 10 years, the employee cannot be ousted from the Court. At best, he could be deprived of all benefits for the period of the delay caused. I am, therefore, of the view that the impugned awards delivered by the Labour Court entertaining these matters cannot be faulted on the issue of delay.

6. Shri Patil has then strenuously canvassed that all these respondents were working on daily wages intermittently. None of them had completed 240 days in continuous service with the petitioner. A daily wager had no right to reinstatement.

7. It is revealed from the impugned award that these respondents had demanded the production of their attendance registers and documents pertaining to the payment of their monthly wages. The petitioner had produced incomplete documents and the Labour Court, therefore, concluded that some document have been withheld by the Municipal council. Based on the available material before the Court and since there was sufficient work available, though the issue of availability of sanctioned posts was not considered, the Labour Court concluded, on the basis of the chart produced, that the respondents had worked for 240 days in continues employment. It was also recorded that several other daily wagers were kept in employment and same were also freshly inducted. The municipal council was not maintaining the seniority list and as such the termination of these respondents was held to be illegal and unsustainable.

8. Barring the cases of Dnyaneshwar and Sanju, referred to above, all other respondents are stated to be continued in employment with the petitioner. Shri Barde submits that he has received information that as the petitioner was converted into a Corporation and about 1300 posts for Class IV workers were created, most of the respondents have been regularized in employment, except Dnyaneshwar and Sanju.

9. It cannot be ignored that these respondents have been in employment since this Court refused interim relief to the petitioner / employer. The impugned awards were, therefore, implemented.

10. In the above backdrop, I do not deem it appropriate to interfere with the direction of reinstatement issued by the Labour Court which has been implemented more than 15 years ago.

11. Both the learned Advocates have seriously canvassed their cases with regard to the aspect of backwages. Shri Patil, strenuously submits that the principle of "No Work No Wages" needs to be applied to the case of these respondents. When they had not performed any work, when they had belatedly raised an industrial dispute and since a daily wager cannot claim right to wages while being out of employment, the impugned award to the extent of the grant of backwages in some of the cases deserves to be set aside.

12. Shri Barde has strenuously defended the grant of backwages by contending that once any termination is held to be illegal, the natural consequence is grant of reinstatement with continuity and full backwages. He submits that depriving an employee of backwages is an exception and grant of backwages is a Rule.

13. The Honourable Apex Court in the matter of J.K.Synthetics Ltd vs. K.P. Agrawal and another [(2007) 2 SCC 433], has observed in paragraph No.18 as under:-

"18. Coming back to back-wages, even if the court finds it necessary to award back-wages, the question will be whether back-wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back-wages, in addition to the several factors mentioned in Rudhan Singh (supra) and Udai Narain Pandey (supra). Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may."

14. In Service jurisprudence the aspect of being in gainful employment post termination is a decisive factor while considering the grant of backwages. The Apex Court has, therefore, held in catena of judgments, as like in K.P.Agarwal (supra), that the

employee must step into the witness box and aver that he is not in employment. Evidence should be brought on record that he tried for an alternate employment and was unsuccessful despite his best efforts. Once this burden of proving lack of employment is discharged, the management has to prove that the employee is in gainful employment.

15. I find from the impugned award that there was no evidence led before the Labour Court with regard to 'not being in employment' and efforts for seeking alternate employment. In the absence of any such averment and evidence, the Labour Court could not have mechanically granted backwages. Shri Patil submits that the Municipal Council / Corporation is in a bad financial condition. Grant of backwages would be a severe financial burden on the Corporation.

16. Considering the above, I deem it appropriate to deprive the respondents of the backwages in those cases in which they have so been granted. So also, a direction to the petitioner needs to be issued to consider cases of these respondents along with similarly situated daily wagers for regularization as per their seniority as and when the post would be available.

17. As such, these petitions, except in the case of Vitthal Dashrath Patil, are partly allowed. The direction to pay backwages, issued by the Labour Court in the impugned awards is quashed and set aside. The rest of the award to the extent of reinstatement and continuity from the date of raising an industrial dispute, is sustained.

18. Since Dnyaneshwar Shridhar Kale is said to have been subsequently terminated, there would be no direction with regard to his proposal for regularization.

19. With regard to Sanju Sitaram Pardeshi, who has passed away, the directions which would be issued in this judgment would be complied with to the extent of grant of monetary benefits to the legal heirs of the deceased / respondent.

20. As such the petitioner shall forward the proposals of these respondents, except mentioned above, along with all other similarly situated daily rated workmen, within a period of twelve weeks from today to the appropriate authority which is said to be the Secretary, Urban Development Department, by considering their continuous employment from the date of raising their industrial dispute. The State / competent authority shall decide the said proposal, strictly as

per their seniority and availability of posts, within a period of four months thereafter. If the posts are available, these respondents would be considered for regularization. Needless to state, this direction would not be applicable in cases where the respondents have already been regularized. Notwithstanding the deprivation of backwages to the respondents, in the event any backwages have been paid by the petitioner to any of these respondents, there shall be no recovery of the same.

21. Rule is made partly absolute in above terms.

22. Since backwages were already denied to Vitthal Dashrath Patil, Writ Petition No.5363 of 2002 stands dismissed. Rule is discharged

(RAVINDRA V. GHUGE, J.)

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