

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

WRIT PETITION NO. 2564 OF 2010

Ram Naresh Sharma,
Age : 48 years, Occupation : Nil,
R/o Pitale Colony,
Near Chavan Hospital,
Plot No.19, Nagapur,
Ahmednagar.

...PETITIONER

-VERSUS-

Trinity Forge Limited,
A-6/1, MIDC, Nagapur,
Ahmednagar.
Through its Managing Director.

...RESPONDENT

**WITH
WRIT PETITION NO.5480 OF 2010**

Ram Pravesh Sharma,
Age : 45 years, Occupation : Nil,
R/o Pitale Colony,
Near Chavan Hospital,
Plot No.19, Nagapur,
Ahmednagar.

...PETITIONER

-VERSUS-

Trinity Forge Limited,
A-6/1, MIDC, Nagapur,
Ahmednagar.
Through its Managing Director.

...RESPONDENT

...

Advocate for Petitioners : Shri Barde Parag Vijay.
Advocate for Respondent : Shri Upadhye Vinayak Narayan.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2017

Oral Judgment :

1 In both these petitions, the Petitioners have challenged the judgment of the Industrial Court dated 23.06.2009 delivered in Revision (ULP) Nos.21, 22, 54 and 55 of 2006 by which the judgment of the Labour Court in Complaint (ULP) Nos.29 and 30 of 1996 is set aside and is substituted by granting a lump-sum compensation of Rs.1 lac to each of the Petitioners/ original Complainants.

2 Since both the Petitioners are identically placed in the same Respondent Factory, these petitions have been taken up for hearing together.

3 Both the Petitioners joined the services with the Respondent as Forgers from 01.01.1981 and 01.01.1983, respectively. They were convicted of offences punishable under the Indian Penal Code on 13.05.1994. The Respondent/ Employer struck their names of the muster roll w.e.f. 31.07.1994 purely on the ground of they being convicted. On 12.09.1995, after getting bail, both the Petitioners attempted to resume duties. The Respondent declined to reinstate them on the ground that

their termination is the result of the conviction.

4 By the judgment dated 07.12.1999, both the Petitioners were acquitted by this Court. Since the Respondent refused to reinstate the Petitioners, they filed Complaint (ULP) Nos.29 and 30 of 1996 before the Labour Court alleging unlawful termination on 06.03.1996. There is no dispute that the ULP complaints were filed before they were acquitted by this Court. It is also undisputed that by the judgment dated 30.01.2006, the Labour Court has allowed the complaints partly, purely on the basis of the acquittal of these Petitioners.

5 The Respondent/ Management approached the Industrial Court by filing Revision (ULP) Nos.21 and 22 of 2006 against both these Petitioners. The Petitioners also filed Revision (ULP) Nos.54 and 55 of 2006 seeking full back wages from the date of the termination instead of lifting the lock-out. By the impugned judgment, the two revision petitions filed by the Petitioners were dismissed and those two revision petitions filed by the Respondent Factory were allowed.

6 The reliefs granted by the Labour Court are as under:-

- "1) *Complaint (ULP) No.29 & 30/1996 are partly allowed.*
- 2) *It is hereby declared that the respondent has*

committed unfair labour practices under Item-1 clauses (b), (d) & (f) of Schedule-IV of MRTU & PULP Act, 1971 by terminating the services of the complainants and directed to desist the same.

- 3) *The respondent company is hereby directed to reinstate the complainant in Complaint (ULP) No.30/1996 on his previous post with continuity of his services with full back wages from the date of lifting the lock out till his actual reinstatement.*
- 4) *The respondent company is further directed to reinstate the complainant in Complaint (ULP) No.29/1996 on his previous post with continuity of his services but with 50% back wages w.e.f. lifting the lock out by the company till his actual reinstatement."*

7 The order passed by the Industrial Court reads as under:-

- "1) *The Revision ULP Nos.54 and 55 of 2006 are dismissed.*
- 2) *The Revision ULP Nos.21 and 22 of 2006 are partly allowed.*
- 3) *The judgment and order passed by the learned Labour Court in Complaint ULP Nos.29/1996 and 30/1996 is set aside and substituted as follows:-*
- 4) *Complaints ULP Nos.29 & 30 of 1006 are partly allowed.*

It is hereby declared that the respondent committed unfair labour practice under items 1 (a), (b), (d) & (1) of Sch.IV of the MRTU & PULP Act, 1971 by terminating the services of the complainants.

The respondent is directed to desist from the same.

The respondent is directed to pay compensation of Rs.1,00,000/- (Rupees One Lakhs only) to each of the complainants in complaints ULP Nos.29/1996 and 30/1996 within one month in lieu of reinstatement and all other terminal benefits."

8 Shri Upadhye, learned Advocate appearing on behalf of the Respondent/ Management, places reliance upon the judgment delivered

by this Court dated 13.10.2016 in **Writ Petition No.925/1995** (*Kalambar Vibhag Sahakari Sakhar Karkhana Limited vs. Dattatraya Trimbakrao Dalve*) to support his contention that if this Court finds that the impugned judgment of the Industrial Court is unsustainable, this Court may follow the view in *Kalambar Sugar Factory (supra)* with regard to the compensation to be calculated in terms of the law of retrenchment and gratuity.

9 The view taken by this Court in *Kalambar Sugar Factory (supra)* may not be applicable to the facts of this case. In the said case, the Factory was admittedly in doldrums. It was closed for many years. It had no crushing activity. 640 employees were disengaged since there was no work and that situation was prevailing in 1994. The Factory went in liquidation on 19.01.2006 and there was no activity in the Factory. Not a single worker was working for the last 10 years as on the date of the judgment of this Court dated 13.10.2016.

10 In the present case, Shri Barde, learned Advocate for the Petitioners/ Workmen, has tendered across the Bar the present status of the website of the Respondent Factory. The printout of the said website is taken today. The same is taken on record and marked as Exhibit X for

identification. The website indicates that the vision statement of the Company is to consolidate its position in the auto and non-auto forging market and cause further expansion by establishing press forge shop and machining division. The mission statement is to achieve 100% production capacity at the earliest and register minimum turnover of Rs.350 to 400 million and to start expansion programme for maximizing the share in the forging market. The Factory has undertaken renovation after Howale Group has taken over the same. The website indicates that the Company has a long association with major auto giants like Tata Motors, Force Motors, Ashok Leyland, etc. and has export market clients, namely, Dana Spicer, UK, Kalmar LMV, Sweden, Tractech Ireland, Velvan Valves, Canada. The website indicates that the factories are brought under the Company by name Trinity Forge Private Limited.

11 Shri Upadhye has disputed the status of the Respondent Factory as shown on the website. He submits that the electricity supply of the Factory has been disconnected in 2010 and the Factory is under the charge of the Punjab National Bank. He then relies upon the affidavit filed by the authorized representative of the Respondent to contend that the Factory would be deemed to have been closed in 2010.

12 I find that the representative of the Respondent Mr. Jayant

Vasantrao Patil, who claims to be the consultant of the Respondent Factory and is authorized to file the affidavits dated 16.02.2017, has made an irresponsible statement. Insofar as the acquittal of these Petitioners is concerned, he has stated below paragraph 2 of his affidavits that *“I say that he has been acquitted by this Honourable Court, but I am rather doubtful whether, an acquittal of the Petitioner is clean and on merits, but it is on the ground of benefit of doubt.”* Apparently, the Affiant Mr.Patil has not cared to go through the judgment delivered by this Court on 07.12.1999. The conclusions drawn by this Court are self explanatory. Mr.Patil has sworn the affidavit apparently by not going through the said judgment and yet, has made an irresponsible statement which is deprecable.

13 Insofar as the financial status of the Respondent Factory is concerned, despite the strenuous submissions of Shri Upadhye that the Factory is closed in 2010, the said contention cannot be accepted for more than one reason. Firstly, under the Industrial Disputes Act, 1947, a formal closure is mandatory and pursuant to such closure, all such employees, whose rights are protected under the Industrial Disputes Act, 1947, have to be formally discharged by following the due process of law. There is nothing placed on record to indicate that the formal notice of closure was

issued, workers were informed of the closure and closure was effected by discharging each of the workers by paying them retrenchment compensation.

14 It is trite law that unless closure is effected legally, the workers would be entitled to the benefits flowing under the service conditions. This Court, in the matter of *Arvind Mahadev Gharat vs. National Textile Corporation (South Maharashtra) Limited*, **2009 (Supp.1) BCR 754 : 2009 (1) ALL MR 226**, has concluded in paragraphs 3, 4 and 5 as under:-

"3. Mr.Patel, the learned counsel for the petitioner-workman, submitted the Industrial Court though correctly gave a direction to pay wages to the workman with effect from the date of notice i.e. 16.3.1996 till the date of closure of the Mill on 6.5.2002, omitted to direct payment of closure compensation under section 25-O. The learned counsel for the respondent-Mills submitted that the Mills had issued a public notice asking the workers to report for duty and had also entered into an agreement with the authorised Union to take back such workers who reported for duty before a certain date. According to the Mills, since the petitioner-workman did not report, no relief ought to have been granted to him. It was next contended on behalf of the Mills that there was no evidence that the workman was not employed elsewhere during the aforesaid period and, therefore, wages also ought not to have been granted to him. The learned counsel for the Mills, however, accepted fairly that no termination order was issued nor was closure compensation paid to the workman.

4. *In the circumstances, it is clear that the contract of employment must be taken to have continued since admittedly it was never terminated by the Mills. The employment must be taken to be continued till the closure of the Mills since the employment was never terminated. Moreover, since admittedly the Mills were closed down, the employer was bound to pay closure compensation as provided under section 25-O of the Act. There is no merit in the contention that there ought to have been evidence of the workman not having been employed before the period of closure. Such a contention may have been available to the Mills had the Mills terminated the services of the workman and, thereafter, if the workman had prayed for reinstatement and back wages. The workman whose services have not been terminated is not bound in law to prove that he was not employed elsewhere obviously since the contract of employment with the employer still subsists. There is thus no merit in the contention on behalf of the Mills.*
5. *In the circumstances, Writ Petition No.2507 of 2005 is allowed with a direction to the respondents to pay closure compensation in accordance with law as on 6.5.2002 with interest at the rate of 6% per annum from 6.5.2002 till date. Rule is made absolute in Writ Petition No.2507 of 2005. Insofar as Writ Petition No.288 of 2006 is concerned, the same is dismissed and the rule is discharged."*

15 Insofar as the purported weak financial condition of the Respondent is concerned, it is stated by Shri Upadhye that the Respondent Factory has been declared as a sick industry on 07.07.2004. If that be the position, then it is curious to note that the website of the Respondent creates a completely different picture. Though Shri Upadhye submits that the website does not indicate the true position of the Respondent, the said

contention appears to be fallacious since the websites of an industrial establishment or for that reason any establishment, are constantly upgraded. It is in this backdrop that the contention of the Respondent that it is in a weak financial condition, cannot be accepted.

16 Shri Upadhye has canvassed that both the Petitioners have been working in different factories since 1996. Besides making such a statement in the affidavit in reply, it is not brought on record that these Petitioners continued to be in gainful employment elsewhere till today.

17 Shri Barde submits that the second Petitioner (Ram Pravesh Sharma) was working with Sidhi Forgings from 1996 till 2001. His salary was Rs.1800/- per month which was less than the minimum rates of wages prescribed under the Minimum Wages Act, 1948. After 2001, he is not in employment. With regard to the first Petitioner (Ram Naresh Sharma), Shri Barde submits that he was never gainfully employed.

18 Shri Upadhye has relied upon the judgment of the Honourable Supreme Court in the matter of *Management of Narendra and Company Private Limited vs. Workmen of Narendra & Company*, **AIR 2016 SC 1748**. In the said judgment, the issue was of the factory being closed and the reinstatement not being possible. The Division Bench of the High

Court took a view that 50% back wages with consequential benefits as like closure compensation and gratuity be paid. The Honourable Supreme Court had directed the Management to file an affidavit indicating actual year of closure so as to calculate the discharge compensation. The affidavit stated that the factory was closed from January, 1995. It is in this backdrop that the order of back wages beyond January, 1995 was vacated.

19 The Honourable Supreme Court, in the matter of *Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat*, **AIR 1997 SC 1802 : 1996 (11) SCC 603**, concluded that the acquittal of an employee would lead to his reinstatement if he has been dismissed from service purely on the basis of his earlier conviction. If the domestic enquiry was conducted prior to his dismissal, the acquittal would not lead to his exoneration. While concluding the Honourable Supreme Court held that since the dismissal of the employee was purely based on his conviction, his reinstatement would be from the date of the acquittal and his back wages would, therefore, be computed from the date of his acquittal. The observations of the Honourable Supreme Court in paragraphs 2 and 3 read as under:-

"2. *This case does not warrant interference for the reason that, admittedly, the petitioner was charged for an offence under Section 302 read with 34 IPC for his involvement in a crime committed on October 1,*

1986. The Sessions Judge had convicted the petitioner under Section 302 read with 34 IPC and sentenced him to undergo imprisonment for life. On that basis the respondents had taken action to have him dismissed from service since he was working as Junior Clerk in the respondent-Electricity Board. The petitioner challenged the validity of the dismissal order by way of a special civil application filed under Article 226 of the Constitution. Pending disposal, the Division Bench of the High Court by its judgment dated October 14, 1992 acquitted him of the offence. Consequently, while disposing of the writ petition, the learned single judge directed the respondent to reinstate him into the service with continuity of the service, but denied back wages. The petitioner then filed letters Patent Appeal No.319/93 which was dismissed by the impugned order dated August 26, 1993. Thus, this special leave petition.

3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own facts and circumstances. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any

error of law warranting interference."

20 In the matter of the *Union of India vs. Jaypal Singh*, **AIR 2004 SC 1005**, the Honourable Supreme Court placed reliance upon the judgment in the case of *Ranchhodji Chaturji Thakore (supra)* and concluded that an employee would have the right of reinstatement with back wages from the date of his acquittal if the dismissal is purely based on his conviction in criminal trial and there is no domestic enquiry conducted.

21 Considering the law laid down by the Honourable Supreme Court in the matters of *Ranchhodji Chaturji Thakore* and *Jaipal Singh (supra)*, the Petitioners would get the right of reinstatement from the date of their acquittal which is 07.12.1999. It has been brought on record by way of evidence and which is admitted by the Petitioners that the Respondent Factory resorted to lock-out from January, 2001 upto June, 2004. By the settlement signed with the Union/ Workers dated 08.06.2004 (Exhibit C-20) placed before the Labour Court, it was agreed that all the employees have waived their wages during the period of lock-out and have reported for duties. As such, 50% back wages granted to the second Petitioner (Ram Pravesh Sharma) would be computed from 07.12.1999 till December, 2000. From January, 2001 till 08.06.2004, he

would not be entitled for any wages placing him at par with other workers as there was lock-out.

22 Though the Respondent has contended that there was again a lock-out from March, 2005 to March, 2006, this aspect was not brought on record before the Labour Court which delivered its judgment on 30.01.2006. The said contention cannot be accepted without any corroborative evidence and without the said aspect having been proved before the Labour Court.

23 Consequent to the above, the second Petitioner (Ram Pravesh Sharma) would be entitled for payment of 50% back wages from 08.06.2004 till today. Shri Barde submits on instructions that the calculations of 50% back wages as well as gratuity would be about Rs.8 lac. The second Petitioner (Ram Pravesh Sharma) may have another three years of service left. To have a golden handshake, he is willing to waive the remaining three years of service and would also not raise any monetary claim if a lump-sum compensation of Rs.5 lac with interest inclusive of gratuity is granted.

24 Considering the said statement, by partly allowing the second Writ Petition No.5480/2010, the impugned judgment of the Industrial

Court dated 23.06.2009 is quashed and set aside. The Revision Petitions stand disposed of. The judgment of the Labour Court dated 30.01.2006 is modified by accepting the statement of the second Petitioner (Ram Pravesh Sharma). The Respondent Factory has deposited Rs.50,000/- in each petition in this Court. As such, the Respondent shall pay to the second Petitioner (Ram Pravesh Sharma) an amount of Rs.4,50,000/- (Four Lac Fifty Thousand) with interest at the rate of 6% per annum from the date of the interim order of this Court dated 02.09.2011 till the actual payment of the amount. The amount of Rs.50,000/- deposited in this Court can be withdrawn by the second Petitioner (Ram Pravesh Sharma) with accrued interest.

25 Insofar as the first Petitioner (Ram Naresh Sharma) is concerned, Shri Barde once again submits on instructions that since he was not gainfully employed, his monetary reliefs would be about Rs.10 lac inclusive of gratuity, considering full back wages granted from 08.06.2004 which is the date of the lifting of the lock-out. Shri Barde submits that with these distinguishable facts with regard to the first Petitioner (Ram Naresh Sharma), a lump-sum compensation of Rs.6 lac with some interest be granted.

26 Considering the above, by partly allowing the first Writ

Petition No.2564/2010, the impugned judgment of the Industrial Court dated 23.06.2009 is quashed and set aside. The Revision Petitions stand disposed of. The judgment of the Labour Court dated 30.01.2006 is modified by accepting the statement of the first Petitioner. The Respondent Factory has deposited Rs.50,000/- in this Court. As such, the Respondent shall pay to the first Petitioner (Ram Naresh Sharma) an amount of Rs.5,50,000/- (Five Lac Fifty Thousand) with interest at the rate of 6% per annum from the date of the interim order of this Court dated 02.09.2011 till the actual payment of the amount. The amount of Rs.50,000/- deposited in this Court can be withdrawn by the Petitioner (Ram Naresh Sharma) with accrued interest.

27 In the light of the above, both the Petitioners will not be permitted to raise any grievance or claim for seeking any monetary benefits against the Respondent/ Management, inasmuch as they will not put forth a separate claim for seeking gratuity as the statement made on instructions has been recorded as above.

28 Rule is made partly absolute in the above terms.