

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2579 OF 1998

Sakharam S/o. Bhanudas Gilbile,
Age: 36 years, Occ: Service,
C/o Shri Pandurang Kale, Trade
Union Centre, Bashirganj, Beed,
Dist. Beed.

... **Petitioner**

Vs.

District Seeds Officer,
Behind Canara Bank,
At Post Tq. & Dist. Beed.

... **Respondent**

Mr. Parag Shahane, Advocate for the Petitioner.

CORAM : P.R. BORA, J.

...
DATE OF RESERVING THE JUDGMENT : 20.04.2017
DATE OF PRONOUNCING THE JUDGMENT : 05.05.2017
...

JUDGMENT:

1. The petitioner has filed the present petition against the order dated 02.08.1996 passed by the Labour Court, Aurangabad Reference (IDA) No. 59 of 1989, whereby, the Labour Court has, though, granted the relief of reinstatement with continuity of service in favour of the petitioner, has refused to award the back wages.

2. It is the case of the petitioner that, he was employed on daily wages by the respondent in the year 1981 and, thereafter, he

had continuously worked with the respondent till 01.08.1986. It was his contention that w.e.f. 1.08.1986 his services were orally terminated. The petitioner, therefore, raised the dispute before the Deputy Commissioner of Labour, Aurangabad who in turn referred the said dispute for adjudication to the Labour Court at Aurangabad.

3. It was the contention of the respondent before the Labour Court that the services of the petitioner were never terminated by the respondent and since the petitioner himself stopped coming for work, no work was provided to him. In the written statement itself the respondent had taken a stand that, it was open for the petitioner to immediately join the services with the respondent.

4. The learned Labour Court after assessing the evidence on record, held the termination of the petitioner illegal and, therefore, directed the respondent to reinstate the petitioner with continuity of service. The Labour Court, however, refused to grant back wages by observing that his appointment was on purely temporary basis and he was working on daily wages. The said part of the order has been challenged by the petitioner by filing the present petition.

5. Shri Shahane, the learned counsel appearing for the petitioner submitted that, when the Labour Court has recorded an

unambiguous finding that the services of the petitioner were terminated illegally, the order of reinstatement in normal course must have been followed with the further order of continuity of service and back wages. The learned counsel further submitted that, it was the specific contention raised by the petitioner before the Labour Court that, though, in the meanwhile, he attempted to secure alternate job, he could not get the same and was throughout unemployed. The learned counsel further submitted that, the contention so raised by the petitioner has not been negated by the respondent. The learned counsel submitted that, once the employee had raised a plea that he was not gainfully employed, the onus was shifted on the respondent to rebut the said contention and to bring on record cogent and sufficient evidence to show that the employee was gainfully employed and was receiving substantially similar emoluments which were being received by him because of his employment with the respondent. In absence of any such evidence brought on record by the respondent, according to the learned counsel, there was no reason for the Labour Court to refuse the relief of back wages.

6. The learned counsel submitted that, the Labour Court has patently erred in not awarding back wages. The learned counsel in support of his contentions relied upon the following judgments:

- i) **Tapash Kumar Paul Vs. BSNL and Anr.** reported in **AIR 2015 SCC 357.**
- ii) **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ed.) and others.**
- iii) **Taranjitshingh I. Bagga Vs. M.S.R.T.C. through the Divisional Controller, Amravati** reported in **2008 (3) MH.L.J. 743.**
- iv) **Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Vinod Krishnan Sharma and Another** reported in **2000 (III) LLJ (Suppl) 1678.**
- v) **C. Pinto Vs. M/s. Prahladrai Dalmia & Ors.** reported in **1987 (I) CLR (Bom H.C.)**

7. None has appeared for the respondent. I have carefully considered the submissions made on behalf of the petitioner and I have also perused the material on record. It is not in dispute that, the petitioner was working on daily wages and was appointed by oral orders. As noted earlier, it was the case of the respondent that the petitioner himself left the services and, as such, there was no question of terminating his services by oral orders. From the material on record, it is quite evident that, though, it was the contention of the petitioner that, he was orally terminated by the then concern officer namely Shri Dhone, the statement so made by the petitioner has not been corroborated by any other evidence.

The petitioner did not adduce any other evidence except his own oral evidence.

8. The evidence adduced on behalf of the respondent before the Labour Court also needs to be considered. One Manohar Laxman Anshingkar had deposed before the Labour Court, who was at the relevant time working at District Seeds Office, Beed, he has in clear words denied the allegation that the petitioner was terminated by oral orders. The said witness has further deposed that the petitioner himself left the job and was not available for the work at Majalgaon. It has also been deposed by the said witness that, the respondent has expressed before the Conciliation Officer that the respondent was ready to immediately take back the petitioner in service, however, petitioner did not accept the said offer and was insisting for back wages. The other allegation made by the petitioner that junior employees were retained was also denied by the respondent. In the cross-examination of the said witness the aforesaid facts have remained uncontroverted.

9. In background of the facts as aforesaid, it apparently does not appear to me that, the Labour Court has committed any error in refusing the relief of back wages to the petitioner. In the judgment of the Hon'ble Apex Court relied upon by the petitioner in the case of **Dipali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalaya (D.ed.) and ors.**, the Hon'ble Apex

Court has referred to one earlier judgment of the Apex Court in the case of **General Manager Haryana Roadways Vs. Rudhan Singh** reported in **(2005) 5 SCC 591**, in the said matter, three Hon'ble Judges of the Supreme Court considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The factual matrix of that case was that after finding the termination of the respondent's service as illegal, the Industrial Tribunal-cum-Labour Court awarded 50% back wages. The Writ Petition filed by the appellant was dismissed by the Punjab and Haryana High Court. The Hon'ble Apex Court set aside award of 50% back wages on the ground that the workman had raised the dispute after a gap of two years and six months and the Government had made reference after eight months, the Court then proceeded to observe:

“There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages

keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

10. It appears to me that, observations so made by the Hon'ble Apex Court squarely apply to the facts of the present case. In the present matter also, though, it was the case of the petitioner that his services were illegally terminated in the year 1986, the reference in that regard came to be made in the year 1989 i.e. after the period of three years. Moreover, the petitioner was a daily wager appointed on temporary basis. It also cannot be ignored that, it was the case pleaded by the respondent throughout that, the petitioner himself left the services and there was no question of terminating his services orally. It has also come on record that in the conciliation proceedings itself an offer was given by the respondent that the petitioner may immediately join the duty. In the written statement filed before the Labour Court the same stand was reiterated by the respondent. However, it is evident that, such offers were not accepted by the respondent and he waited for joining the service till decision of the Labour Court.

The conciliation proceedings ought to have been taken place prior to making reference in the year 1989. Thus, the offer to join the duties was given by the respondent to the petitioner prior to 1989, however, as noted earlier the petitioner did not accept the said offer and did not join.

11. Having regard to the facts as aforesaid, it does not appear to me that, any error has been committed by the Labour Court in refusing the relief of back wages to the petitioner. The Writ Petition being devoid of any substance deserves to be rejected and is accordingly rejected. Rule discharged.

(P.R. BORA)
JUDGE