

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

WRIT PETITION NO. 8261 OF 2015

Sunil s/o Shivaji Gholap,
Age : 40 years, Occupation : Nil,
R/o Hanumantgaon,
Post Pathare,
Taluka Rahata,
District Ahmednagar.

...PETITIONER

-VERSUS-

Trustee and Secretary,
Pravara Medical Trust,
At and Post Loni,
Taluka Rahata,
District Ahmednagar.

...RESPONDENT

...

Advocate for Petitioner : Shri Sangeet L.V.

Advocate for Respondent : Shri V.D.Hon, Senior Advocate a/w Shri Ajinkya
Deshmukh h/f Shri Hon Ashwin V.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 While issuing notice on 16.11.2015, this Court had passed the following order :-

- "1. *The petitioner is aggrieved by the impugned judgment and award dated 22/03/2013 delivered by the Labour Court in Ref.(IDA) No.12/2005.*
2. *The petitioner contends that he was appointed on 15/07/2000. He has been orally terminated w.e.f. 14/09/2001 without compliance of Section 25(F) and (G) of the Industrial Disputes Act, 1947. Though the Labour Court has concluded that the termination is in violation of Section 25(F) and (G) of the I.D.Act, 1947, the Reference is partly allowed and the petitioner is granted compensation of Rs.15,000/- only and reinstatement is denied.*
3. *Mr.Sangit submits that once violation of Section 25(F) is established, the competent Court has no option but to grant reinstatement with continuity in service and back wages. He relies upon the following 3 judgments of the Apex Court:- (3 citations)*
4. *Issue notice to the respondent, returnable on 09/12/2015."*

3 I have heard the strenuous submissions of Shri Sangeet, learned Advocate for the Petitioner and Shri Hon, learned Senior Advocate appearing on behalf of the Respondent.

4 There can be no dispute that the Petitioner has worked for about 14 months. In the cross-examination before the Labour Court, it has been admitted that he was also working as a LIC agent. After his oral termination on 14.09.2001, an industrial dispute is raised in 2005 which

has been decided by the Labour Court on 22.03.2013. It is equally undisputed that after the Petitioner put in 14 months in employment, he is out of employment for more than 15 years.

5 In the light of the above, I deem it appropriate to rely upon the view taken by the Honourable Supreme Court in the following four cases:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009]*;
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136]*;
- (c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558]*; and
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327]*.

6 In the above judgments, the Honourable Supreme Court has concluded that when a short spell of employment is followed by a long duration of unemployment, the relief of reinstatement with continuity and with or without back wages, would not be practicable. It is held that a pragmatic view in such situation would be to grant compensation of about Rs.30,000/- to Rs.40,000/- per year of service put in by the concerned

employee.

7 The Labour Court has granted Rs.15,000/- as retrenchment compensation. In doing so, it does not appear that the Labour Court has considered the law on quantifying the compensation. What it has done is that the retrenchment compensation has been granted presuming that the Petitioner would have completed 11 years in service on the date of the impugned award. Such conclusion cannot be sustained in the light of the judgments delivered by the Honourable Supreme Court mentioned above.

8 In the light of the above, this Writ Petition is partly allowed. The impugned award dated 22.03.2013 is modified only to the extent of clause (2). The direction in clause (2) of the impugned award with regard to the figure of Rs.15,000/- (Rupees Fifteen Thousand) as retrenchment compensation, shall be replaced by the direction to pay a quantified lump-sum compensation of Rs.40,000/- (Rupees Forty Thousand) to the Petitioner.

9 In the event, the amount of Rs.15,000/-, as directed in clause (2) of the impugned award, has still not been paid by the Respondent to the Petitioner, the Respondent shall pay an amount of Rs.40,000/- to the Petitioner within a period of TWELVE WEEKS from today. Needless to

state, if the amount of Rs.15,000/- is already paid, the residual amount shall be paid within the said time frame.

10 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)