

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6056 OF 2010
WITH
CIVIL APPLICATION NO.3337 OF 2017

The Nanded District Central Co-operative
Bank Ltd., Head Office at Near Shivaji Statue,
Railway Station Road,
Tq. and Dist. Nanded,
Through its Authorised Officer,
Vithal s/o Kondaji Shinde,
Age-53 years, Occu-Assistant Manager,
Legal Section, R/o Nanded,
Dist.Nanded

-- PETITIONER

VERSUS

Ram s/o Jalba Kawade,
Age-59 years, Occu-Retired,
R/o Vijapur, Tq.Hadgaon,
District : Nanded

-- RESPONDENT

Mr.K.J.Suryawanshi, Advocate for the petitioner.
Mr.G.B.Kulkarni, Advocate for the respondent.
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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 07/03/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment of the Industrial Court dated 31/03/2010 by which the Revision (ULP) No.38/2009 filed by the respondent/employee was partly allowed and he was granted 25% back wages for the period 30/05/2003 till 01/03/2007.

2. I have heard the learned Advocates for the respective sides at length.

3. A short issue has been posed for adjudication. The undisputed factors are as under :-

[a] The Labour Court, while allowing Complaint (ULP) No.128/1995, on 03/05/2003, concluded that the order of dismissal dated 03/08/1995 is set aside and the respondent would be reinstated in service with continuity on or before 30/05/2003.

[b] Back wages from the date of dismissal till the judgment of the Labour Court were denied.

[c] The Industrial Court, by its judgment dated 31/08/2006, dismissed Revision (ULP) No.37/2003 filed by the petitioner / Bank.

[d] This Court, by order dated 17/01/2007, dismissed Writ Petition No.253/2007 filed by the Bank and thereby sustained the judgment of the Labour Court as well as of the Industrial Court.

4. In 2009, the respondent/employee filed Revision (ULP) no.38/2009 for seeking modification in the judgment of the Labour Court dated 03/05/2003 after the said judgment dated 03/05/2003 was sustained in its totality by the Industrial Court and by this Court as well. Therefore, the prayer for full back wages from the date of

termination till 30/05/2003 that was specifically put forth, was declined by the Industrial Court in the impugned judgment dated 31/03/2010 in the light of the above facts. However, in the same judgment dated 31/03/2010, the Industrial Court went into the issue of the respondent not being reinstated as per the judgment of the Labour Court (the petitioner was reinstated on 01/03/2007) and hence concluded that the respondent would be entitled for 25% back wages.

5. In my view, once the judgment of the Labour Court dated 03/05/2003 was sustained by the Industrial Court by judgment dated 31/08/2006 and both these judgments were sustained by this Court by its order dated 17/01/2007, Revision (ULP) No.38/2009 filed by the respondent was untenable and was rightly rejected to the extent of the prayers put forth by the respondent.

6. It is, therefore, surprising that, without the issue of 'not reinstated and kept out of employment till 28/02/2007' being subject matter of the revision petition, the Industrial Court has allowed the revision petition and granted 25% back wages. When this issue was not before the Industrial Court and cannot be a part of a revision u/s 44, the Industrial Court could not have overstepped its jurisdiction. It

has, therefore, exercised jurisdiction not vested in it by Law.

7. Considering the above, this petition is allowed. The impugned judgment of the Industrial Court dated 31/03/2010 is quashed and set aside and Revision (ULP) No.38/2009 stands dismissed. Rule is made absolute accordingly.

8. Notwithstanding the above, the respondent's claim for reinstatement from March 2003 and payment of full wages till 28/02/2007, needs to be addressed in separate proceedings. The respondent would therefore be at liberty to resort to an appropriate proceeding for seeking full wages from the date of the judgment of the Labour Court till his actual reinstatement on 01/03/2007 with all incidental and consequential benefits.

9. Since the Labour Court has granted continuity of service to the respondent Ram Jalba Kawade and since he has retired from service on 11/01/2010, his entire service in continuity till his superannuation will have to be taken into account for grant of pensionary benefits. In this view of the matter, the civil application No.3337/2017 filed by Ram Jalba Kawade is allowed in terms of prayer clause 'B' which reads as under :-

“The petitioner/Bank shall accordingly initiate steps for calculating and releasing his pensionary benefits within 6 (six) weeks.”

10. Needless to state, the issue of claim of wages from March 2003 to February 2007, if raised by the employee Ram Jalba Kawade, shall be decided independently by the competent Court on its own merits.

(RAVINDRA V. GHUGE, J.)