

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 1759 OF 2016

Maharashtra State Road  
Transport Corporation,  
Dhule Division, Dhule  
Through Divisional Controller.

..Petitioner

Versus

Gajanan Malikarjun Vibhute,  
Age 50 years, Occ. Service  
R/o Chaitanya Nagar, Dhule.

..Respondent

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Advocate for Petitioner : Shri D.S.Bagul  
Advocate for Respondent : Shri N.L.Choudhari  
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CORAM : RAVINDRA V. GHUGE, J.  
Dated: February 08, 2017  
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment of the Industrial Court dated 30.7.2015, by which, Revision (ULP) No.9 of 2015 filed by the respondent was allowed and he was granted 50% back wages.

5. The undisputed factors emerging from record and their submissions are as under:-

(a) Since the respondent was dismissed from service by way of punishment, he had preferred Complaint (ULP) No.9 of 2013 before the Labour Court.

(b) By Part I judgment dated 22.8.2014, the Labour Court concluded that the enquiry was vitiated and the findings of the enquiry officer are perverse.

(c) The petitioner did not assail the Part I judgment before the Industrial Court or before this Court.

(d) The Corporation conducted a *de novo* enquiry before the Labour Court.

(e) The Labour Court concluded that the charges are not fully proved against the respondent and partly allowed the complaint granting reinstatement with continuity in service.

(f) Since the respondent did not put-forth any pleadings in the complaint as regards being not in employment, the Labour Court

deprived him of the backwages.

(g) The petitioner accepted the verdict of the Labour Court by its Part II judgment allowing the complaint and did not challenge the Part I and the Part II judgments before the Industrial Court.

(h) The Corporation reinstated the respondent in service.

(i) The respondent approached the Industrial Court for claiming full backwages in Revision (ULP) No.9 of 2015.

(j) The Industrial Court concluded that the Labour Court was right in appreciating that the employee has stepped into the witness box and had pleaded in paragraph No.8 of his examination in chief that despite efforts, he was not successful in acquiring employment and has remained unemployed.

(k) The Labour Court as well as the Industrial Court, therefore, noted the said pleadings of the employee in his deposition, though it was not so mentioned in the original complaint.

6. The Honourable Apex Court in paragraph No.18 of the judgment delivered in J.K.Synthetics Ltd vs. K.P.Agrawal and another [(2007) 2 SCC 433], 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.”*

7. As such, the requirement of stepping into the witness box and making an averment that he is unemployed and there is no source of earning was considered by the Industrial Court. 50% backwages therefore, have been granted.

8. In Nicholas Piramal India Ltd. Vs. Harising [2015 II CLR 468], the Honourable Apex Court has concluded in such circumstances that grant of 50% backwages would reduce the hardships of unemployment

suffered by the employee.

9. Considering the above and in the supervisory jurisdiction of this Court, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous or likely to cause grave injustice to the petitioner / Corporation in the light of the ratio of the Honourable Apex Court in the matter of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447], and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682].

10. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

( RAVINDRA V. GHUGE, J. )

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