

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1087 OF 2002
with
CIVIL APPLICATION NO. 1663 OF 2016

1. Zilla Parishad, Nashik.
2. District Health Officer,
Zilla Parishad, Nashik.

...PETITIONERS

VERSUS

Harischandra Ajorprasad Das,
R/o. At village: Dalvat,
Sub-Centre Khirad, Taluka Kalyan,
District Nashik.

...RESPONDENT

...

Mr. Ashwin R. Kapadnis, Advocate for the petitioners.
Mr. Rajiv Patil, Sr. Adv. a/w. Onkar Warange for Respondent.

...

CORAM : P.R. BORA, J.

...

DATE OF RESERVING THE JUDGMENT : 02.03.2017
DATE OF PRONOUNCING THE JUDGMENT: 05.05.2017

...

JUDGMENT:

1. The order dated 19.06.2000 passed by the Labour Court, Nashik in Complaint (ULP) No. 159 of 1988 and the order passed by the Industrial Court, Nashik in Revision Application (ULP) No. 2 of 2001 passed on 05.10.2001 are challenged in the present petition by the petitioners.

2. The respondent has challenged his termination before the Labour Court by filing a complaint under the provisions of M.R.T.U. and P.U.L.P. Act. It was alleged by him that his services were terminated without following due process of law. The learned Labour Judge vide the impugned order allowed the complaint filed by the respondent and directed the present petitioners to reinstate the respondent as Vaccinator or in any other equivalent post with continuity of service and to pay him 50% back wages with effect from 09.09.1987.

3. The order passed by the Labour Court was questioned by the petitioners by filing Revision Application (ULP) No. 2 of 2001. The said Revision Application was partly allowed. The Industrial Court upheld the order passed by the Labour Court directing the reinstatement of the respondent with continuity of service, however, set aside the order to the extent of grant of 50% of back wages by the Labour Court. Aggrieved by, the petitioners have filed the present petition taking exception to both the aforesaid orders first passed by the Labour Court and the another passed by the Industrial Court.

4. The present petition was admitted on 04.03.2002 and on the same day ad interim relief in terms of prayer clause 'C' was granted. Vide prayer clause 'C' the petitioners had

prayed for staying the execution and operation of the order passed by the Member, Industrial Court on 05.10.2001, whereby, it has partly confirmed the order passed by the Labour Court. The ad interim order so passed was confirmed by this Court vide order passed on 04.07.2002.

5. The record of the case further reveals that the application was filed by the respondent invoking the provisions under Section 17-B of the Industrial Disputes Act, 1947 and the same was allowed by this Court vide order passed on 08.08.2002. Vide the said order, the petitioners were directed to pay the last drawn wages to the respondent as on the date of his termination during pendency of the present petition.

6. It is the contention of the petitioners in the present petition that, the respondent was not appointed by following the due process of law and further that the appointment orders so issued in favour of the respondent were for the fixed period and on expiry of the said period the respondent automatically ceased to be in the employment of the petitioner. It is also contended by the petitioners that there were complaints against the respondent and several memos and warnings were issued to the respondent in that regard. As against it, it is the submission of the respondent that, though, initially he was

appointed for the period of eleven months, after expiry of the period of said first order his services were continued by the petitioners by issuing in his favour the further appointments. It is the further contention of the respondent that, though, every time eleven months appointment order were issued in his favour, infact, he had worked with the petitioners without any break continuously for the period of more than 240 days in each of the three preceding years and, as such, his services could not have been terminated orally by the petitioners.

7. Having heard the learned Advocates, I have gone through the petition paper book with their assistance. The documents on record reveal that the petitioner was first appointed vide appointment order dated 12.02.1983 issued in his favour by the petitioners for the period of eleven months. The record further demonstrates that, thereafter, two such orders were issued in favour of the respondent and, thus, he was continued in the services of the petitioners as a Vaccinator. The record further reveals that, though, the last appointment issued in favour of the respondent was only up to the period of 06.11.1986, the respondent was continued in the employment by the petitioners till 09.09.1987. The learned Labour Court in para 11 of its judgment has recorded a finding that the respondent was in continuous service of the petitioners in the

period between 1983 to 1987. However, the Labour Court has not dealt with the objection raised by the petitioners that the selection process was not followed while appointing the respondent and that the respondent was temporarily appointed for a fix period.

8. In the Revision Application, though, Industrial Court has observed that the Labour Court did not deal with the issue raised by the petitioners regarding exceptions under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 recorded a finding that since the respondent complainant had worked continuously for more than one year, it was necessary for the respondent i.e. present petitioners to comply with the provisions of the Section 25-F of Industrial Disputes Act. The Industrial Court, therefore, held the termination of the respondent complainant illegal for want of compliance of Section 25F of the Industrial Disputes Act. As noted herein-above, the Industrial Court modified the order passed by the Labour Court by holding the respondent complainant entitled for 50% back wages instead of 100% as were granted by the Labour Court.

9. From the evidence on record, it is undisputed that the services of the respondent were terminated without giving him any notice or without paying him the compensation as

provided under Section 25-F of the Industrial Disputes Act. As such, the said termination has to be held illegal. However, the question now arises, whether the orders passed by the Courts below directing reinstatement of the respondent with continuity of service can now be given effect after long lapse of fifteen years. As I have noted earlier, this Court has granted interim relief in the year 2002 in favour of the petitioners, thereby, staying the effect and operation of the orders passed by the Courts below directing reinstatement of the present respondent with continuity of service. It is thus evident that, the respondent is out of the employment since the year 1987 i.e. for the period of about thirty years, no doubt as per the order passed by this Court on 08.08.2002, the respondent is receiving the wages as provided under Section 17B of the Industrial Disputes Act.

10. As has been observed by the Hon'ble Apex Court in the case of **Jagbir Singh V/s. Haryana State Agriculture Marketing Board and another** reported in **2009(15) SCC 327**, the earlier view of the Supreme Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, as has been further observed by the Hon'ble Apex Court in the same

judgment, in recent past, there has been a shift in the legal position and in a long line of cases, the Hon'ble Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of prescribed procedure.

11. In the case of **Jagbir Singh cited (supra)**, the Hon'ble Apex Court has referred to several earlier judgments of the Apex Court on the issue and has laid down some factors which are relevant for determining the relief to be granted in the matters alike the present matter before this Court. The Apex Court has laid down that in such cases the Court has to examine

- (i) whether in making the appointment, the statutory rules, if any, had been complied with
- ii) the period, the employee had worked with
- iii) whether there existed any vacancy; and
- iv) whether the concern employee obtained some other employment on the date of termination or passing of the award.

12. The Hon'ble Apex Court in the case of **Panitole Tea**

Estate V/s. Workmen reported in **1971 (1) SCC 742**, while dealing with the judicial discretion of the Labour Court or the Tribunal under the Industrial Disputes Act in directing appropriate relief on setting aside the wrongful dismissal of a workman, stated in para 5 as follows:

"5... The question whether on setting aside the wrongful dismissal of a workman he should be reinstated or directed to be paid compensation is a matter within the judicial discretion of the Labour Court or the Tribunal, dealing with the industrial dispute, the general rule in the absence of any special circumstances being of reinstatement. In exercising this discretion, fair play towards the employee on the one hand and interest of the employer, including considerations of discipline in the establishment, on the other, require to be duly safeguarded. This is necessary in the interest both of security of tenure of the employee and of smooth and harmonious working of the establishment. Legitimate interests of both of them have to be kept in view if the order is expected to promote the desired objective of industrial peace and maximum possible production. The past record of the employer, the nature of the alleged conduct for which action was taken against him, the grounds on which the order of the employer is set aside, the nature of the duties performed by the employee concerned and the nature of the industrial establishment are some of the broad relevant factors which require to be taken into consideration. The factors just stated are merely illustrative and it is not possible to exhaustively enumerate them. Each case has to be decided on its own facts and no hard-and-fast rule can be laid down to cover generally all conceivable contingencies."

13. Referring to the aforesaid judgment, as well as, few earlier other judgments of the Supreme Court, the Hon'ble Apex

Court in the case of **Assistant Engineer, Rajasthan Development Corporation and another V/s. Gitam Singh** reported in **(2013) 5 SCC 136**, has ruled that mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay, if any, in approaching the Court are all relevant factors to be considered while granting relief in case of wrongful termination.

14. In view of the law laid down as above, the facts of the present case will have to be considered. What emerges from the record and the pleadings of the parties is as under:

- i) that the respondent has worked for about four years with the petitioners.
- ii) that several memos and warnings were issued to the respondent.
- iii) that the respondent is out of employment for last thirty years.
- iv) as mentioned in the civil application the age of the respondent in the year 2014 was 54 years, it is thus evident that, only one year may have been now left for attaining the age of superannuation.
- v) It is evident from the record that, the respondent was not selected in the regular selection process and further

that he was given the appointments for the period of eleven months.

vi) That the respondent is receiving last drawn wages from August 2002, by virtue of the order passed by this Court on 08.08.2002.

15. Having regard to the facts as aforesaid and taking into account, the law laid down by the Hon'ble Apex Court in the judgments cited herein-above, though, no case is made out by the petitioners to quash and set aside the findings recorded by the Courts below to the effect that, services of the respondent were terminated illegally, it would be wholly impracticable now to give effect to the order of reinstatement passed by the Courts below. Considering the fact that, the respondent has worked with the petitioners for the short period of about four years and taking into account that, the respondent was granted last drawn wages from the year 2002, under orders of this Court and further keeping in view the fact that the respondent is out of employment for a long period, I deem it appropriate to direct the petitioners to pay an amount of Rupees Two Lakh to the respondent by way of compensation in lieu of reinstatement and continuity of service.

16. In the foregoing circumstances, the petition is partly

allowed. The order passed by the Industrial Court directing reinstatement of the respondent with continuity of service is set aside and quashed. In lieu of reinstatement and continuity of service, the petitioners are directed to pay to the respondent an amount of Rupees Two Lakh by way of compensation, besides the wages paid to the respondent under Section 17-B of the Industrial Disputes Act. The amount of compensation shall be paid to the respondent within three months from the date of this order, failing which the said amount shall carry interest @ 9% per annum till its realisation. Rule made absolute in the aforesaid terms. Civil application stands disposed of.

(P.R.BORA)
JUDGE