

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2377 OF 2016

WITH

WRIT PETITION NO.11105 OF 2015

Rajgad Sahakari Sakhar Karkhana Limited and another... Petitioners

Vs.

Balasaheb Janardhan Deshmukh and others ... Respondents

Mr. Balasaheb R. Deshmukh for Petitioners.

Mr. Vaibhav R. Gaikwad for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : JULY 24, 2017

P.C. :

Heard Mr. Deshmukh, learned Counsel for petitioners and Mr. Gaikwad, learned Counsel for respondent No.1 in both the Petitions at length.

2. As the Petitions are pending for admission, leave to amend as prayed for is granted. Amendment shall be carried out within one week from today.

3. These Petitions are instituted by Rajgad Sahakari Sakhar Karkhana Limited (for short 'sugar factory') under Articles 226 and 227 of the Constitution of India. Writ Petition No.2377 of 2016 takes exception to the judgment and order dated 02.03.2012 passed by the learned Judge, 2nd Labour Court, Pune in Complaint (ULP) No.102 of 2004 as also the judgment and order dated 03.09.2015 passed by the learned Member, Industrial Court, Pune (for short 'Tribunal') in Revision Application (ULP) No.80 of 2012. By order dated 02.03.2012, the Labour Court partly allowed the complaint filed by the respondent No.1, hereinafter referred to as 'complainant', and declared that sugar factory

has engaged in commission of unfair labour practices under Section 28 read with Items No.1(a), (b), (d) and (f) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act') and directed it to cease and desist in exercising them in future. The sugar factory is directed to reinstate the complainant on his original post as a Clerk with effect from 01.04.2004 with direction to pay 25% back-wages to the complainant. Aggrieved by this decision, complainant instituted Revision Application (ULP) No.80 of 2012 as the back-wages were awarded only to the extent of 25%. Sugar factory also instituted Revision Application (ULP) No.33 of 2012 against the Labour Court's order. By order dated 03.09.2015, the Industrial Court modified the order of granting 25% back-wages and directed the sugar factory to pay back-wages @ 65%.

4. Writ Petition No.11105 of 2015 takes exception to the order dated 02.03.2012 passed by the Labour Court in Complaint (ULP) No.102 of 2004 as also order dated 04.09.2015 passed by the Tribunal in Revision Application (ULP) No.33 of 2012. By order dated 04.09.2015, the Tribunal dismissed the Revision Application preferred by the sugar factory against the order of the Labour Court dated 02.03.2012. Since the common questions of law and fact arise in these Petitions as also parties are one and the same, these Petitions can conveniently be disposed of by this common order.

5. The matter was heard on 01.09.2016 when the statement made on behalf of the sugar factory that it has no objection to the complainant joining the services pursuant to the impugned order passed by the Labour Court and confirmed by the Industrial Court was recorded. On behalf of the complainant, time was sought for taking instructions as to whether complainant is interested in joining the services of the sugar

factory. The matter was thereafter heard on 05.06.2017 and was adjourned to 19.06.2017 so as to enable the complainant to make a positive statement on the next date of hearing as to whether he is interested in joining the services of the sugar factory on the post of 'Clerk'. On 10.07.2017, statement made by the complainant that he is ready and willing to join sugar factory was recorded.

6. In support of these Petitions, Mr. Deshmukh strenuously contended that the Courts below committed serious error in ordering reinstatement of the complainant. He submitted that complainant was working as a Clerk in the Legal Department. He was instructed to look after execution proceedings filed by the sugar factory namely, Execution Petition No.164 of 2000 and Execution Petition No.168 of 2000 in Ahmednagar Court. Though the complainant was instructed to attend these proceedings, he did not attend the execution proceedings on 29.03.2003. The executing Court dismissed the proceedings in default which has resulted into loss of Rs.3,60,871/-. He submitted that inquiry was conducted against the complainant and the inquiry officer found him guilty of the charges levelled against him.

7. He submitted that the Labour Court had framed two preliminary issues, namely, (i) whether the complainant proves that the enquiry conducted against him is not fair, proper and against the principles of natural justice and (ii) whether the misconduct was proved before the inquiry officer. He submitted that by part I award dated 16.12.2009, the Labour Court held that the inquiry conducted against the complainant was fair, proper and as per the principles of natural justice. The Labour Court further held that the misconduct was not proved before the inquiry officer. In pursuance thereof, sugar factory adduced evidence before the Labour Court for substantiating the misconduct committed by the

complainant. The Courts below however held that sugar factory did not establish the misconduct even before the Court.

8. Mr. Deshmukh has invited my attention to the documents at exhibit-7/2 and 7/3, both dated 12.08.2002. He submitted that these documents would clearly establish that the complainant was in-charge of execution proceedings pending in Ahmednagar Court. Complainant came with the explanation that on 29.03.2003, he attended criminal cases on behalf of the sugar factory pending before the Court of Judicial Magistrate First Class at Bhore, Taluka Bhore, District Pune. In fact before inquiry officer, complainant admitted on 09.05.2003 (exhibit 7/4) that he will hereafter will not commit any misconduct and also will not be negligent. He prayed for condoning the lapses. Mr. Deshmukh, therefore, submitted that complainant clearly admitted that he was in-charge of execution proceedings in Ahmednagar Court and that he admitted committing misconduct. He, therefore, prayed for condoning the lapses on his part in attending the proceedings before the Ahmednagar Court.

9. Mr. Deshmukh also invited my attention to paragraphs 8 and 9 of the amended complaint. In paragraph 8, complainant asserted that he attended criminal cases on behalf of the sugar factory pending before the Court of Judicial Magistrate First Class at Bhore. However, he did not produce any document for establishing that he attended the proceedings before Magistrate's Court at Bhore. Mr. Deshmukh further submitted that in the cross-examination of the complainant, he admitted that he used to work in the Legal Department and that he was authorized by sugar factory to represent it in the Court. In paragraph 4, he admitted that the work of recovery of amount in Darkhast proceedings filed in the Court was his work. He, therefore, submitted that the Courts below committed

serious error in ordering reinstatement.

10. In so far as the award of back-wages of 25% by the Labour Court and 65% by the Tribunal is concerned, he submitted that on 14.07.2011, the Labour Court framed additional issue, namely, issue No.4-A, which is to the following effect:

	Issues	Findings
4-A)	Is complainant entitled for difference of wages, if he is entitled for back-wages?	Entitled for 25% of Back-wages only.

11. He submitted that though the complaint was amended and additional issue No.4-A was framed, sugar factory was not given opportunity to deal with this issue as also lead evidence. On this ground also, the Courts below committed error in passing the order of payment of back-wages. He submitted that the Tribunal has increased the percentage of back-wages from 25% to 65%, ignoring the admissions given by the complainant to the effect that from January 2006 to August 2006, he got salary of Rs.1500/- per month; from September 2006 to March 2008, he got salary of Rs.2500/- per month; from April 2007 to July 2008, he got salary of Rs.4500/- per month; from August 2008 to March 2009, he got salary of Rs.6519/- per month; from April 2009 to March 2010, he got salary of Rs.6936/- per month and from April 2010 to March 2011, he got salary of Rs.7727/- per month. He, therefore submitted that Petitions require consideration.

12. On the other hand, Mr. Gaikwad submitted that the Courts below have concurrently held that in the inquiry, sugar factory has not proved misconduct. Though the sugar factory adduced evidence before the Labour Court, both the Courts concurrently held that even before the Court, sugar factory has not proved the misconduct. He submitted that

the inquiry officer failed to consider that though on 29.03.2003, execution proceedings were dismissed in default, subsequently, they were restored. In other words, the charge that was levelled against the complainant that as he did not attend the execution proceedings in Ahmednagar Court on 29.03.2003, which resulted into dismissal of default of these execution proceedings thereby the sugar factory sustaining losses does not survive after restoration of the execution proceedings. He submitted that this aspect was considered by the Courts below. The Courts below, after considering the material on record, have concurrently held that misconduct was neither proved before the inquiry officer nor before the Court. He submitted that the reliance placed on exhibit-7/2, 7/3 and 7/4 before the inquiry officer do not establish that complainant was instructed to attend execution proceedings on 29.03.2003. He has produced Rojnama of complaint pending before the Magistrate's Court at Bhore on 29.03.2003 and submitted that complainant was present on that day before the Court of Magistrate. Mr. Gaikwad further submitted that the complainant was not the only person looking after the execution proceedings at Ahmednagar. Apart from the complainant, S/Sh. Ghone, Jadhav and Jagtap were also looking after the Court's proceedings. He submitted that after the complaint was amended, opportunity was given to the sugar factory to file additional written statement. Sugar factory filed purshis adopting its earlier written statement. He submitted that there was no pleading as regards denial of claim of back-wages and the Tribunal, therefore, held that the averments as regards back-wages remained unchallenged. The Tribunal has considered evidence of the complainant as regards his getting salary from January 2006 onwards and accordingly, restricted payment of back-wages to 65%. He, therefore, submitted that no case is made out for interfering with the impugned orders.

13. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the sugar factory has challenged the orders dated 02.03.2012 passed by the Labour Court and 03.09.2015 passed by the Tribunal in Revision Application (ULP) No.80 of 2012 in Writ Petition No.2377 of 2016 and has also challenged the order dated 02.03.2012 passed by the Labour Court and order dated 04.09.2015 passed by the Tribunal in Revision Application (ULP) No.33 of 2012. The sugar factory however has not challenged part I award dated 16.12.2009. By part I award, the Labour Court held that the inquiry conducted against the complainant was fair, legal and proper and that the principles of natural justice were not violated. The Labour Court further held that the sugar factory did not establish the misconduct before the inquiry officer. In view thereof, the sugar factory adduced evidence by examining Shri Bhilare at exhibit C-14. After considering the evidence on record, the Labour Court held that even before the Court, sugar factory has not established the misconduct. The Tribunal has confirmed that finding.

14. Mr. Deshmukh relied upon exhibits-7/2 and 7/3, both dated 12.08.2002, produced before the inquiry officer. A perusal of these documents does not even remotely indicate that the complainant was in-charge of the execution proceedings before the Ahmednagar Court. Letter dated 12.08.2002 records that the Advocate in-charge of the execution proceedings had demanded certain advance amount. The other document dated 12.08.2002 also shows that it was the submission made before the Managing Director for sanctioning the expenses. In other words, none of these documents establishes that complainant was instructed to attend the proceedings before the Magistrate's Court on 29.03.2003.

15. The Labour Court has considered the evidence of Shri Bhilare at exhibit C-14 examined by the sugar factory. In paragraph 25, the Labour Court noted that there is nothing on record to accept that the complainant was the only person to attend the Court matters. The defence of sugar factory revealed that Advocate Garge used to conduct the matters for sugar factory. It was also noted that Shri Bhilare deposed that Shri Khamkar was the Administrative Head of the complainant who used to supervise the duties of the complainant. Shri Khamkar however was not examined by the sugar factory. The Labour Court, therefore, concluded that evidence of Shri Bhilare failed to establish misconduct of the complainant. In paragraph 27, the Labour Court dealt with the evidence of the complainant at exhibit U-19 in which he stated that the Darkhast proceedings were restored by the Court and thus, sugar factory did not suffer any loss due to negligence. In paragraph 28, the Labour Court noted that apart from the complainant, S/Sh. Ghone, Jadhav and Jagtap were also responsible for the Court matters. Cross-examination of Shri Bhilare also revealed that he was not the person looking after the court proceedings. The Labour Court accordingly rejected the evidence of Shri Bhilare. The Tribunal has affirmed the findings of the Labour Court in this regard.

16. As far as the payment of back-wages is concerned, the Labour Court discussed this aspect in paragraph 34. It was observed that on 18.06.2011, amendment was carried out to the pleadings in respect of difference of wages and alternate employment. This was after the evidence of employer was concluded and therefore there was no opportunity to the employer to disapprove the above-referred stand. The Labour Court accordingly awarded 25% back-wages. Aggrieved by this decision, complainant preferred Revision Application (ULP) No.80 of 2012. While partly allowing the Revision Application, the Tribunal has

considered this aspect from paragraph 9 onwards. In paragraph 11, the Tribunal has considered the salary received by the complainant from his other employment. Tribunal also dealt with paragraph 34 of the Labour Court's order. In paragraph 12, it was observed thus,

“12. It is settled principle of law that pleadings relate back to the date of complaint. In the present case, after the complaint was amended the respondents were given an opportunity to file additional written statement, the respondents by filing a purshis mentioned that they are adopting the earlier written statement itself. In the said original written statement there are no pleadings regarding the back wages. Consequently what applicant-original complainant pleaded is remained unchallenged on record. In this connection I would like to refer the observation of the Hon'ble Supreme Court referred (supra). The Hon'ble Supreme Court in the judgment referred above observed as under:

“If the employer wants to deny the back-wages to the employee or contest his entitlement to get consequential benefits, then it is for him / her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments”.

17. In paragraph 13, the Tribunal observed that there was no denial on the part of the employer as regards back-wages claimed by the complainant in the amended complaint. In paragraph 13, the Tribunal noted that when the services of the complainant were terminated, he was getting Rs.4,500/- per month and when he got job elsewhere, he was getting Rs.1,500/- per month. The Tribunal accordingly awarded 65% back-wages on the ground that he was losing Rs.3000/- per month.

18. Mr. Deshmukh submitted that in paragraph 14, the Tribunal observed that in order to determine the back-wages, evidence of the parties is not necessary. However, that is not the only finding given by the Tribunal. The Tribunal further observed that in the present case “in order to determine the back-wages evidence of the parties is not necessary, as the pleadings of the applicant remained unchallenged on

record, and therefore, the exercise of remanding matter to the trial court would be futile exercise”.

19. A perusal of the enquiry papers as also material on record does not indicate that the sugar factory produced the applications filed for restoration of Execution Petitions No.164 of 2000 and 168 of 2000 so as to find out the reasons set out for not attending the proceedings on 29.03.2003. Petitioners should have produced those applications on record before the enquiry officer, and if not, at least before the Labour Court to substantiate the charges about negligence of the complainant as also dereliction of duty on his part in not attending execution proceedings on 29.03.2003. On this ground also, it cannot be held that the complainant was responsible for dismissal of the Execution Petitions thereby causing financial loss to the sugar factory.

20. After considering the material on record, I do not find that the Tribunal committed any error in passing the impugned order as also increasing the back-wages from 25% to 65%. In paragraph 11, the Tribunal also considered that if the complainant were to continue in the employment, he would have got salary of Rs.11,000/- per month. In view thereof, no case is made out for interfering with this part of the order.

21. Petitioners were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based upon no evidence or that they are contrary to the evidence on record. Petitioners were also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusion arrived at by the Courts below. Hence, Petitions fail and the same are dismissed.

22. In the order dated 10.07.2017, statement of Mr. Gaikwad that

complainant is ready and willing to join sugar factory was recorded. Mr. Deshmukh, on the other hand, submitted that complainant is not interested as he is gainfully employed elsewhere. Mr. Gaikwad assures that complainant will join duties with the sugar factory with effect from 01.08.2017.

23. At this stage, Mr. Gaikwad prays for permission to withdraw 25% back-wages deposited by the sugar factory in this Court, without prejudice to the rights and contentions of the complainant to recover balance amount of back-wages as the Petitions are dismissed. Mr. Deshmukh opposes request for withdrawal of the amount.

24. As the Petitions are dismissed, complainant is permitted to withdraw the amount of 25% back-wages deposited by the sugar factory in this Court. This shall be without prejudice to the rights and contentions of the complainant. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab