

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3998/2016

Maharashtra State Road Transport Corporation, Nagpur

..Vs..

Ramesh S/o Ramraoji Bongulwar and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATE : 14.2.2017.

Heard Shri R.S. Charpe, Advocate for the petitioner and Shri C.V. Jagdale, Advocate for the respondent No.1.

The petitioner / employer has challenged the order passed by the subordinate Courts concurrently upholding the claim of the respondent / employee, setting aside the dismissal order and directing the employer to reinstate him with continuity of service and to pay full back-wages.

The subordinate Courts have concurrently recorded that the enquiry conducted against the employee was not proper and fair and the employee was not given opportunity to defend and the enquiry proceeded against him though he had given an intimation that he was bed ridden. After the Labour Court passed the order on preliminary issue on 20th September, 2011 concluding that the enquiry conducted

against the employee was not fair and proper, the employer filed an application (Exh. No.22) seeking permission to amend the written statement to prove its case before the Labour Court. This application was rejected on 3rd December, 2011. It is the case of the employer that the application (Exh. No.22) was dismissed on 3rd December, 2011 and on the same day the complaint filed by the employee was allowed and because of it the employer is deprived of the opportunity of challenging the order passed on application (Exh. No.22). Though the submission made on behalf of the employer is appealing, in the facts of the case it is without substance. The employer failed to challenge the order passed on application (Exh. No.22) while filing the revision against the order passed by the Labour Court allowing the complaint filed by the employee. The employer did not raise any ground in the memorandum of revision which shows that the employer was aggrieved by the order passed by the Labour Court on the application (Exh. No.22).

The other ground of challenge is that the subordinate Courts have granted back-wages without their being any pleadings and evidence on record on behalf of the employee to show that he was not gainfully employed during the relevant period. The Advocate for the employee has pointed the pleadings in paragraph No.5(g) of the complaint as follows:

“5(g). The act on the part of the respondent to issue dismissal order is an act of victimisation and high handed act. It is

submitted that since the date of dismissal, the complainant is out of employment, the complainant is having no source of income at all he tried to get employment elsewhere but invain. As such, the complainant is jobless since the date of dismissal hence the complainant is entitled for re-instatement with continuity of service alongwith full back wages.”

Though in the written statement the employer denied the contention of the employee that he was not gainfully employed, the employer has failed to lead any evidence to discharge the burden of proving that the employee was gainfully employed during the relevant period.

After examining the documents placed on the record of the writ petition and going through the impugned orders, I find that the findings recorded by the subordinate Courts are in consonance with the material on the record and they do not suffer from any patent illegality or perversity which necessitates interference by this Court in the extraordinary jurisdiction. I do not see any reason to interfere with the impugned orders. The petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE