

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

WRIT PETITION NO.4539 OF 2015

(MAHARASHTRA STATE ROAD TRANSPORT CORPN...VS.. VIJAY GANGADHAR THAKRE & ANR.)

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

Court's or Judge's orders

Shri R.S.Charpe, Advocate for the petitioner.
Shri A.J.Pathak, Advocate for Respondent No.1.
Ms M.A.Barabde, A.G.P. for Respondent No.2.

CORAM : Z.A.HAQ, J.

DATED : OCTOBER 03, 2017.

Heard.

2. The petitioner (employer) has challenged the order passed by the Industrial Court dismissing the revision filed by it and maintaining the order passed by the Labour Court by which the complaint filed by the respondent/ employee was allowed.

3. The learned advocate for the petitioner/ employer has submitted that while passing the preliminary order on the point whether the departmental enquiry conducted by the employer was fair and proper, the Labour Court has made observations against the respondent/ employee and in favour of the petitioner/ employer, however, the final conclusions were against the employer. It is submitted that inadvertently the preliminary order remained to be challenged, however, as the preliminary order is patently illegal and unsustainable, it would be open for this Court to examine its legality and validity while exercising jurisdiction under Article 227 of the Constitution of India.

4. The submission made on behalf of the employer that the preliminary order passed by the Labour Court is illegal and its legality and validity can be examined by this Court even at this stage, cannot be considered in the facts of the case. The Industrial Court has recorded that after the preliminary order came to be passed, the employer was given several opportunities to lead evidence before the Labour Court to substantiate its case, however, the employer failed to avail the opportunities and the employer has not led any evidence before the Labour Court to prove the misconduct alleged against the employee. The petitioner has not controverted this fact.

The petitioner has neither challenged the preliminary order nor has led evidence before the Labour Court to prove the misconduct alleged against the respondent employee. The petitioner cannot be permitted to contend that the findings recorded by the subordinate Courts on this point are unsustainable.

5. It is submitted on behalf of the employer that even if the order of Labour Court directing reinstatement of employee is maintained, the directions given by the Labour Court to the employer to pay back-wages cannot be sustained as the employee had not pleaded before the Labour Court that he was not gainfully employed during the relevant period. The advocate for the employee has pointed out that the Labour Court has considered this aspect in paragraph 15 of its order in which it is recorded that the employee has led evidence that he was not gainfully employed during the relevant period and the employer has neither cross-examined

the employee nor has led any evidence to discharge the burden which shifted on it.

6. I do not find any illegality or perversity in the orders passed by the subordinate Courts, which necessitates interference by this Court in the extraordinary jurisdiction.

The petition is **dismissed**. In the circumstances, the parties to bear their own costs.

At this stage, the learned advocate for the respondent/ employee has made a grievance that though this Court has not granted any interim order, taking advantage of the pendency of the petition, the petitioner/ employer has not complied with the order passed by the Labour Court. The learned advocate for the petitioner/ employer has made a statement that the respondent/ employee would be reinstated as per the impugned order within one week and the back wages will be paid within three months.

The submission made on behalf of the petitioner/ employer is accepted.

JUDGE