

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2509 OF 1995

Madhavrao s/o Sidramappa Shetkar,
Age : 49 years, Occupation : Service,
R/o Nadi Hattarga, Tq.Nilanga,
District : Latur.

...PETITIONER

-VERSUS-

The Latur District Central Cooperative
Bank Limited, Latur, District Latur.

...RESPONDENT

...
None for the Petitioner.
Advocate for the Respondent : Shri A.V.Hon.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th June, 2018

Oral Judgment :

1 None appeared for the Petitioner on 07.12.2017, 05.06.2018 and 06.06.2018. Even today, none appears for the Petitioner though the petition is shown on the daily board for "Passing Orders".

2 Rather than dismissing the matter in default, I deem it appropriate to deal with this petition on its own merits.

3 I have heard the learned Advocate for the Respondent and have gone through the petition paper book.

4 The Petitioner has challenged the order dated 18.10.1994 delivered by the Industrial Court, Solapur in Revision (ULP) No.70/1993 thereby, partly allowing the revision and setting aside the judgment and order dated 24.08.1993 delivered by the Labour Court in Complaint (ULP) No.9/1986 to the extent of granting full back wages.

5 I have considered the six grounds for challenge formulated by the Petitioner in this petition.

6 The copy of the judgment of the Labour Court dated 24.08.1993 delivered in Complaint (ULP) No.9/1986 by which, the Petitioner was granted reinstatement with continuity and full back wages, has not been placed on record. The learned Advocate for the Respondent, however, has taken me through the said judgment. It is obvious that the Petitioner has not led evidence on the issue of being not in gainful employment. The least that was expected from the Petitioner was that he should have led evidence to indicate that he was not in gainful employment, that he made a serious attempt to acquire an alternate employment and despite his best efforts, he did not succeed. In the absence of any evidence on this count, the Labour Court was not justified in mechanically granting full back wages.

7 The Honourable Supreme Court in paragraph 18 of its judgment delivered in *J.K. Synthetics Limited vs. K.P.Agrawal*, **2007(2) SCC 433**, has observed 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 [(2005) 5 SCC 591, G.M. Haryana Roadways vs. Rudham Singh]* and *Uday Narain Pandey [(2006) 1 SCC 479, U.P.State Brassware Corpn. Ltd. vs. Uday Narain Pandey]*. 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.”

8 The Industrial Court, while delivering the impugned judgment, has rightly considered the fact situation and modified the relief of full back wages to 50% back wages. On noticing that there was no evidence as is expected from a terminated employee in view of the J.K. Synthetics judgment (supra), the Industrial Court has rightly interfered with the direction of granting full back wages, within its revisionary jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

9 In view of the above, I do not find that the impugned

judgment of the Industrial Court could be termed as being perverse or erroneous or likely to cause gross injustice to the Petitioner keeping in view the law laid down in *Syed Yakoob v/s K.S.Radhakrishnan*, **AIR 1964 SC 477** and *Surya Dev Rai v/s Ram Chander Rai*, **AIR 2003 SC 3044**.

10 This Writ Petition, being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)