

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2715 OF 2002

1. The Chief Executive Officer,
Zilla Parishad, Jalgaon,
District : Jalgaon,
 2. The District Health Officer,
Zilla Parishad, Jalgaon,
Dist. Jalgaon,
 3. The Medical Officer,
Incharge, Primary Health Centre,
Sonwad, Tal.Erandol,
Dist. Jalgaon
- PETITIONERS

VERSUS

Vijaya Shankar Saraf,
Age-40 years, Occu-Service,
R/o Affu Galli, Raver,
Dist. Jalgaon

-- RESPONDENT

Mr.P.B.Patil, Advocate for the petitioners.
Mr.A.V.Hon, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/03/2018

ORAL JUDGMENT :

1. The petitioner/Zilla Parishad is aggrieved by the judgment of the Labour Court dated 24/03/1998 delivered in Complaint (ULP) No.146/1993 and the judgment of the Industrial Court dated 06/03/2002 delivered in Revision ULP Nos. 1622/1999 and

1674/1999 filed by both the sides. The respondent/worker has not preferred a counter writ petition since she had succeeded before the Industrial Court and was granted full back wages.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. The undisputed factors in this matter can be summarized as under :-

[a] The respondent/workman suffered a departmental enquiry on account of remaining unauthorizedly absent intermittently.

[b] Order of dismissal from service was issued on 26/04/1993 by way of punishment.

[c] She preferred Complaint (ULP) No.146/1993 before the Labour Court.

[d] By Part I judgment, the Labour Court sustained the enquiry as being fair and proper and upheld the findings of the Enquiry Officer, thereby settling the issue that the charges of absenteeism have been proved against the employee.

[e] On proportionality of the punishment, the Labour Court found that the punishment of dismissal from service was shockingly disproportionate and hence granted reinstatement with continuity and 30% back wages.

[f] The workman preferred the revision petition claiming full back wages and the petitioner / Zilla Parishad also preferred a revision petition for seeking quashing of the judgment of the Labour Court.

[g] By the impugned judgment, the Industrial Court allowed the

revision petition filed by the workman and enhanced the back wages to 100% and dismissed the revision petition filed by the petitioner / establishment.

3. It is, therefore, apparent from the proceedings that as the enquiry and the findings of the Enquiry Officer were sustained, the legal conclusion is that the charges of absenteeism are proved against the workman. As the Labour Court found that the punishment of dismissal from service was shockingly disproportionate and since the charges of absenteeism were proved, it granted reinstatement with continuity in service and deprived the workman of 70% back wages by way of punishment.

4. In the above fact situation, if the Industrial Court is to come to a conclusion that the enquiry is unfair, vitiated or the findings are perverse, it is duty bound to remit the proceedings to the Labour Court for conducting a *denovo* enquiry. The Industrial Court has not arrived at such a conclusion and it has held that if the termination is held to be illegal, full back wages had to be granted. When the Industrial Court did not pronounce a specific conclusion that the enquiry is set aside for being vitiated or the findings of the Enquiry Officer are set aside for being perverse, it had to proceed on the

premise that as the enquiry was sustained, the charges were proved and hence it was to consider whether the moulding of the relief by the Labour Court was proper or not.

5. In my view, when the charge of unauthorized absenteeism for a period which is not too large is proved, the direction of reinstatement can be sustained. Continuity of service naturally has to be granted on reinstatement as the dismissal is held to be shockingly disproportionate. In these circumstances, the workman deserves to be punished for the charge of unauthorized absenteeism. I find that the order of the Labour Court depriving the workman of 70% back wages, by way of a punishment is commensurate to the seriousness and the gravity of the proved mis-conduct.

6. It is informed that the respondent/workman was reinstated in service and she must be on the verge of her retirement. 30% back wages have already been paid to her by the Management.

7. Considering the above, this petition is partly allowed only to the extent of setting aside the order of the Industrial Court granting 100% back wages and by sustaining the order of the Labour Court of granting 30% back wages. Depriving the workman of 70% back

wages is proper punishment. The direction of both the Courts below of reinstating the workman with continuity in service is sustained.

8. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)