

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

WRIT PETITION NO. 2720 OF 2004

Usav Forging Private Limited.
C-38, MIDC, PB No.18,
Ahmednagar.
Through its Managing Director.

...PETITIONER

-VERSUS-

Vankar Thakaji Pote,
Age : Major, Occupation : Service,
R/o C/o Bandhu Prem Hair Cutting
Saloon, At & Post Wambori,
Tq.Rahuri, District Ahmednagar.

...RESPONDENT

...
Advocate for the Petitioner : Shri S.S.Wagh h/f Shri S.T.Shelke.
Advocate for the Respondent : Shri P.L.Shahane.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th May, 2018

Oral Judgment :

1 I have heard Shri Wagh, learned Advocate for the Petitioner and Shri Shahane, learned Advocate for the Respondent, at length. I have gone through the petition paper book with their assistance.

2 The Industrial Court, Ahmednagar has allowed Complaint (ULP) No.562/1995 vide the impugned judgment dated 31.10.2003 and directed the Petitioner/ Management to allow the original Complainant to resume duties and pay 50% back wages. Though continuity is not granted,

it can be presumed that continuity is granted because the Industrial Court has ordered payment of 50% back wages.

3 While admitting this petition on 29.04.2004, this Court has stayed the effect and operation of the impugned judgment.

4 Considering the strenuous submissions of the learned Advocates appearing for the respective sides and the admitted position that none of the parties have led any oral evidence before the Industrial Court, I find that the entire case is based on certain appointment letters placed on record by the original Complainant, who is the Respondent herein. The appointment orders indicate that the Respondent was inducted as a Trainee by order dated 19.06.1994. He was issued with similar orders of six months engagement as a Trainee by the Petitioner which is a private industry. It is equally undisputed that the Respondent was disallowed for reporting for duties from 01.08.1995. Consequentially, he has worked as a trainee from May, 1994 till July, 1995.

5 It is settled law that a trainee has no right to employment and is not a probationer as is provided under the Industrial Employment (Standing Orders) Act, 1946. A trainee is a person as like an apprentice, who is inducted for imparting training with a particular type of job in the industry. After the period of training is over, he can be inducted as a probationer. As such, a trainee would have no right to continue in employment, much less, seek reinstatement in service of the employer.

6 Complaint (ULP) No.562/1995 was filed by the Respondent on 04.09.1995 after he was disengaged from 01.08.1995. Needless to state, admittedly, he was out of employment on the date of filing of the complaint. Considering the scheme of Sections 4 to 7 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act"), the Industrial Court would not have jurisdiction to entertain the complaint with regard to reinstatement under Schedule II or Schedule III or Items 2 to 10 of Schedule IV of the MRTU & PULP Act.

7 The Respondent had approached the Industrial Court with the case that he was working as a trainee. It was a superficial nomenclature and was in fact appointed in the regular service of the employer. However, the copy of the first appointment order dated 19.06.1994 indicates that the Respondent was appointed as a trainee (शिकाऊ उमेदवार) from 02.05.1994. He was continued as such till July, 1995. He is out of employment for the past 23 years.

8 Considering the peculiar facts as above and taking into account the employment of the Respondent for only 14 months as a trainee and being out of employment for 23 years, I deem it appropriate to rely upon the following four judgments of the Honourable Supreme Court for granting compensation to the Respondent in lieu of reinstatement :-

(a) Assistant Engineer, Rajasthan State Agriculture Marketing

Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];

(b) Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];

(c) BSNL Vs. Man Singh, [(2012) 1 SCC 558]; and

(d) Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].

9 In the light of the above and keeping in view that the Petitioner is a private industrial establishment, I find that the compensation of Rs.75,000/- would be appropriate in lieu of the order of reinstatement issued by the Industrial Court.

10 As such, this Writ Petition is partly allowed. The impugned judgment and order dated 31.10.2003 delivered by the Industrial Court is quashed and set aside. Complaint (ULP) No.562/1995 is disposed of by awarding compensation of Rs.75,000/- (Rupees Seventy Five Thousand) to the Respondent, which the Petitioner shall pay within a period of EIGHT WEEKS from today, failing which, the said amount would carry interest at the rate of 6% per annum from November, 2003 till it's actual payment.

11 Rule is made partly absolute in the above terms.