

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8085 OF 2009

Ashok Sahakari Sakhar Karkhana Ltd.,
Ashoknagar, Tal.Shrirampur,
Dist.Ahmednagar
(Through its Managing Director) -- PETITIONER

VERSUS

Raosaheb Karbhari Devkar,
R/o Nipani Wadgaon, Tal.Shrirampur,
Dist.Ahemdnagar --
RESPONDENT

Mr.V.N.Upadhye, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 31/07/2018

ORAL JUDGMENT :

1. The petitioner/Factory is aggrieved by the judgment of the Industrial Court dated 07/01/2009 to the extent of granting full back wages to the respondent for the period 31/05/1993 till 30/01/1995.

2. I have considered the submissions of the learned Advocates for the respective sides. When this petition was admitted by this Court on 05/12/2009, interim relief in terms of prayer clause "D" was granted to the petitioner and therefore, the impugned judgment was

stayed.

3. The undisputed factors in these proceedings are as under :-

[a] The respondent joined employment with the petitioner as a 'workshop majdoor' on 08/12/1980.

[b] He was charge sheeted on 29/01/1993 for committing grave and serious misconducts.

[c] On 31/05/1993, he was discharged in lieu of the punishment of dismissal from service.

[d] He preferred Complaint (ULP) No.107/1993 before the Labour Court for challenging his discharge on 04/06/1993.

[e] A written statement was filed by the petitioner on 14/06/1993 through a reply to the application for interim relief.

[f] On 31/01/1995, the petitioner voluntarily reinstated the respondent in service.

[g] On 29/09/2004, the Labour Court, Ahmednagar dismissed the complaint.

[h] The respondent preferred the Revision (ULP) No.75/2004 on 18/10/2004 before the Industrial Court.

[i] By the impugned judgment dated 07/01/2009, the revision was allowed and the respondent was granted full back wages for the period 31/05/1993 to 30/01/1995.

[j] The respondent has retired from service on 31/03/2017.

[k] Gratuity and retiral benefits are withheld due to the pendency of these proceedings.

[l] The respondent has not challenged the judgment of the Labour Court by which the enquiry conducted against him and

the findings of the Enquiry Officer have not been interfered with.

[m] The charges levelled upon the respondent have been proved in the enquiry.

[n] It is submitted on instructions that the Management would pay all the legal dues of the respondent as are payable to him in view of his service conditions, within 4 weeks from today, except the back wages, which is a subject matter of challenge in this petition.

4. It is obvious from the record that the respondent has been voluntarily reinstated by the Management on 31/01/1995. The result of the enquiry has not been interfered with by any Court. The Management does not dispute that the respondent has been granted reinstatement with continuity in service and back wages are not paid by way of a punishment.

5. I have perused the charge sheet dated 29/01/1993 wherein the language used by the respondent, while refusing to perform his duties, has been quoted. I find from the said language that the respondent has challenged the authority of the department head. He intimidated him by refusing to work. He has stated that he does not care for any engineer. His utterances were in an aggravated form and were of abusive nature.

6. Though the respondent contends that he has not uttered those sentences mentioned in the charge sheet, the fact remains that the charges were held to be proved and as such, it is established that he has indulged in willful subordination and disobedience of a lawful order of his superior, has behaved in a disorderly and indecent manner and has refused to work. Once these charges are proved, the respondent deserves to be punished. The employer has reinstated him with continuity in service. As such, if the respondent is deprived of the back wages for a period of about 18 months, that would amount to a sufficient punishment for his misdeeds.

7. The Industrial Court has lost sight of the above aspect and has concluded that since the Management has voluntarily reinstated the respondent, it would lead to a presumption that they do not desire to punish him and the punishment stands withdrawn, is an assumption.

8. In my view, no Court can interfere with the quantum of punishment on assumptions and presumptions. There was no material before the Industrial Court to conclude that the Management has decided to pay the back wages to the respondent

and withdraw its entire disciplinary action. The Industrial Court, while exercising its jurisdiction u/s 44 of the MRTU and PULP Act, 1971, could not have allowed the revision petition on the basis of assumptions and presumptions.

9. In view of the above, this petition is allowed. The impugned judgment dated 07/01/2009 is quashed and set aside and Revision (ULP) No.75/2004 stands rejected. Rule is, therefore, made absolute.

10. learned Advocate for the Management further makes a gracious statement that interest @ 4% p.a. would be granted on the gratuity amount for the period from 01/05/2017 till the amount is paid to the respondent.

11. The gracious statement made on behalf of the Management is accepted and therefore it is expected that the Management would pay the legal dues of the respondent within a period of 4 to 6 weeks.

Kranti
Hansraj
Shekatkar

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signed by
Kranti Hansraj
Shekatkar
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(Ravindra V.Ghughe, J.)