

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10258 OF 2012

Haribhau s/o Balaji Ambhore,
age: 62 years, Occu. Nil,
R/o Dongaon Tq. Jafrabad,
Dist. Jalna.

.. Petitioner

versus

1. Depot Manager,
M.S.R.T.C. Jafrabad,
Tq. Jafrabad, Dist. Jalna.

2. The Divisional Controller,
M.S R. T. C. Jalna,
Dist. Jalna

.. Respondents

Mr. P. S. Paranjape, Advocate for petitioner
Mr. D. S. Bagul, Advocate for respondents

CORAM : SUNIL P. DESHMUKH
AND P. R. BORA, JJ

DATE : 24th January, 2018

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

1. Briefly stated, grievance of the petitioner is, the order passed by labour court, Jalna in complaint (ULP) No. 82 of 2008 on 30-03-2010 has not been followed and complied with in its letter and spirit.

2. The order reads, thus;

" 1. The complaint is partly allowed.

2. It is declared that the respondents have engaged in unfair labour practices by dismissing the complainant from service 04-08-1997. They are, therefore, directed to cease and desist from such engagement.

3. The respondents are directed to reinstate the complainant in service with continuity w.e.f. 04-08-1997 till the date of his superannuation, but without back wages.

4. The order shall be complied within 2 months from today. "

3. Learned counsel are ad-idem that respondents had been before the industrial court against aforesaid order of the labour court, however, challenge had failed.

4. Mr Paranjape submits yet, the Divisional Controller of respondents at Jalna issued order on 25-01-2011 whereunder he purports to decline benefits accruing to petitioner with the declaration of engagement by respondents in unfair labour practice and specifically granting continuity in his service with effect from 04-08-1997 till the date of his superannuation.

5. Learned counsel further submits that labour court's order is specific, unambiguous and requiring solemn and strict compliance yet under impugned order dated 25-07-2011 with erroneous assumption based on circular dated 02-06-2009, the benefits accrued to petitioner under the orders of labour court have been declined, observing thus :

" त्यांचा दिनांक ०७.०८.१९९७ ते ३०.०४.२००८ पर्यंतचा एकूण ३९२० दिवसाचा कालावधी असाधारण बिनपगारी रजा समजण्यात येत आहे. श्री हरिभाऊ बालाजी अंभोरे हे सेवानिवृत्त कर्मचाऱ्यास मिळणाऱ्या सावलीतस ते पात्र आहेत. श्री हरिभाऊ बालाजी अंभोरे हे दिनांक ०७.०८.१९९७ ते ३०.०४.२००८ पर्यंत प्रत्यक्ष कर्तव्यावर नसल्यामुळे संदर्भ क्र. मधील तरतुदीनुसार दि. ०७.०८.१९९७ ते ३०.०४.२००८ पर्यंतच्या उपदानास व वेतन निश्चितीस ते पात्र नाहीत. "

6. He submits, pursuant to the order passed by labour court, petitioner had been entitled to notional incremental increases in the salary and benefits accordingly ought to have been paid to him. However, instead, erroneously relying on the circular referred to above, the petitioner had been declined fixation of pay and gratuity for the period from 07-08-1997 to 30-04-2008.

7. Learned counsel referring to circular dated 02-06-2009 annexed to petition, submits that the same would

not be applicable in petitioner's case in the face of specific order passed by the labour court.

8. Learned counsel appearing on behalf of respondent Mr. D. S. Bagul submits that circular dated 02-06-2009 has been issued with reference to the supreme court decision and thus the same has considered while following the order passed by the labour court. He further submits that the order of industrial court had been passed in 2010 whereas petition has been preferred in 2012. In the circumstances, he submits, the court may not exercise its discretion in favour of petitioner.

9. Although aforesaid submissions are advanced on behalf of respondents, the order passed by Divisional Controller, of respondents Jalna on 25-07-2011 based on circular dated 02-06-2009 appears to be untenable on two grounds. Basically, the circular dated 02-06-2009 which is relied on while passing order dated 25-07-2011 is a subsequently issued circular after the date of superannuation of the petitioner and secondly, the supreme court judgment relied on by respondents with reference to which said circular is claimed to have been issued has been delivered in an entirely

different context and different set of facts wherein, it appears, the employee concerned had been held guilty of unauthorized absence from his official duty.

10. In present matter, parties concur on that factual scenario is different. Petitioner had been charged of consumption of alcoholic drink and a sum of Rs.100/- had been found on his person. The labour court had, on evidence, found that the charges could not be sustained and had passed order dated 30-03-2010 referred to above and challenge to the findings of labour court had failed before the Industrial court. As such, the order of labour court had become final and thus ought to have been followed scrupulously. It can hardly be said that petitioner can be imputed unauthorized absence and much less held liable for the same.

11. Having regard to aforesaid, it may have to be referred to that a judgment of a higher court would have application in the context in which it has been rendered but, would not be applicable like Euclid's formula.

12. In the circumstances, impugned order dated 25-07-2011 passed by Divisional Controller, Maharashtra

State Road Transport Corporation, Jalna, Division, Jalna, to the extent it declines fixation of salary and payment of gratuity according to order of labour court is set aside. The parties to workout pay fixation and the gratuity amount and respondents shall pay the same to petitioner as early as possible and preferably within a period of six months from the date of receipt of writ of this order.

13. Rule made absolute in aforesaid terms.

P. R. BORA
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-