

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

WRIT PETITION NO. 11463 OF 2018

**SAIBABA SANSTHAN SHIRDI THROUGH CHIEF EXECUTIVE
OFFICER
VERSUS
VERONIKA KASHINATH PANDIT**

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Advocate for the Petitioner : Shri N. R. Bhavar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th OCTOBER, 2018.

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PER COURT :

1. The petitioner/Management is aggrieved by the judgment and award dated 26/06/2018, by which, the 2nd Labour Court, Ahmednagar has allowed Reference (IDA) No. 61/2014 and by setting aside the termination of the respondent dated 13/06/2011, has directed the petitioner/petitioner/Management to reinstate the second party in services with continuity, though without back-wages.

2. The learned Advocate for the petitioner/Management has strenuously criticized the impugned order. His submissions can be summarized as under :-

(a) The respondent joined as a staff nurse on 22/04/2006.

(b) She was granted regular pay scale in employment on 01/08/2007.

(c) She applied for higher education in M.Sc.Nursing course, without prior permission of the Management, on 06/09/2010.

(d) Application for leave to undertake higher studies was refused on 22/10/2010.

(e) She, therefore, moved an application on 15/11/2010 seeking permission to join duties, which was not accepted.

(f) On 09/06/2011, without prior notice, the respondent was terminated with effect from 13/06/2011.

(g) Copy of the termination order is not placed on record.

3. I have considered the submissions of the learned Advocate. I have gone through the record available and have perused the impugned award.

4. The Labour Court has recorded that the petitioner/Management has terminated her services on

account of continued absence which is said to be a misconduct. The President of the Management recommended her for education leave after she was selected for M.Sc. Nursing course which she informed the first party /Management. She took admission to the M.Sc. Course and completed the course in 2012.

5. The Management now takes a stand that she was terminated for continued absence by order dated 09/06/2011. It is however conceded that similarly situated other employees like Lijjo Thomas, Smt. Sonali Goraksh, Smt. Sheetal Indait, Pravin Wani and Manoj Sabale and such others have been granted education leave by the Management. Mr. Thomas and Smt. Goraksh completed their M.Sc. Education and have resumed duties.

6. The record reveals that the Management has admitted that it neither issued a charge-sheet to the respondent on account of the unauthorized absence, nor did they issue her even a show cause notice calling for her explanation. It is glaring that this Management did not choose to conduct an enquiry before the Labour Court to prove the charges levelled

against the respondent.

7. In the above backdrop, the order of termination from service with allegations of misconduct of unauthorized absenteeism could not have been sustained. The Labour Court has rightly set aside the termination as the Management did not exercise its right to conduct an enquiry before the Labour Court, considering the law laid down by the Honourable Apex Court in the matter of *Bharat Forge Company Ltd. V/s. A. B. Zodge, 1996 (73) FLR 1754 : AIR 1996 SC 1556*, which have been considered by this Court in *MSRTC, Beed V/s. Syed Saheblal Syed Nijam, 2014 (III) CLR 547 : 2014(4) Mh.L.J. 687 and Maharashtra State Cooperative Cotton Growers Marketing Federation Limited Vs. Vasant Ambadas Deshpande, 2014 (I) CLR 878 : 2014(3) Mh.L.J. 339* and in the matter of *KSRTC Vs. Lakshmidevamma 2001(2) CLR 640*.

8. I, therefore, do not find that the impugned order, to the extent of setting aside the order of the termination and granting reinstatement, could be faulted.

9. Insofar as the denial of back-wages is concerned, the respondent employee has not preferred a Writ Petition as on date as no such petition has been circulated. The said issue, therefore, need not be dealt with in this petition.

10. The learned Advocate for the petitioner submits that the same respondent had preferred Writ Petition No. 6332/2018 before the learned Division Bench of this Court. Grievance was that her proposal for seeking approval to her appointment with the Seva Nursing College/respondent No.5 operated by the Sakhar Kamgar Hospital Trust/respondent No.6, was rejected by the Maharashtra University of Health Sciences/respondent No.2. It is then pointed out that the respondent is said to be working with the Seva Nursing School from 01/08/2007 as a tutor/clinical instructor.

11. I find that the learned Division Bench is yet to deal with the said certificate, inasmuch as, no such document was placed before the Labour Court. It requires no debate that the Labour Court would deal only with such oral and documentary

evidence, which is placed before the Court.

12. When the Labour Court delivered the impugned judgment, the respondent was said to have undertaken fresh employment with another organization. No litigant is expected to starve during the period of unemployment. If an alternate employment is taken up, the law is settled that back-wages can be deprived. If the respondent does not desire to join duties pursuant to the judgment and award of the Labour Court, it would be a different situation which can be dealt with by the petitioner/Management on its own merits. Refusing continuity of service merely because a terminated employee undertakes an alternate employment for keeping his or her mind, body and soul together, would not dis-entitle her from continuity in service.

13. In view of the above, I do not find that the impugned judgment and award could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-