



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 1312 of 2016

Municipal Council Achalpur, through its President, Tal. Achalpur,
Dist.Amravati and another

Versus

Vidhyadhar Ukardaji Gawai and another

WITH

Writ Petition (WP) No. 6884 of 2017

Vidhyadhar Ukardaji Gawai and another

Versus

Municipal Council Achalpur, through its President, Tal. Achalpur,
Dist.Amravati and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Writ Petition No. 1312 of 2016

Shri M.D.Lakhey, Advocate for the petitioners.

Shri N.R.Saboo, Advocate for the respondents.

Writ Petition No. 6884 of 2017

Shri N.R.Saboo, Advocate for the petitioners.

Shri M.D.Lakhey, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.

DATED : 10th JANUARY, 2024.

COMMON ORDER

Heard.

2. The judgment and order dated 1st July, 2015 passed by the learned Industrial Court, Amravati in Revision No. 12 of 2010 dismissing the revision and

upholding the judgment and order passed by the Labour Court dated 22nd December, 2009 in complaint ULP No. 20 of 1994, thereby partly allowing the complaint and directing the respondents to reinstate the petitioners with continuity of service without backwages, is under challenge in these writ petitions.

3. The petitioners were working as a daily wager and by retaining the juniors to the petitioners in violation of Section 25-F of Industrial Dispute Act, 1947 the services of the petitioners were terminated vide order dated 1st November, 1993.

4. Feeling aggrieved by the same, the petitioners approached the learned Labour Court by filing complaint ULP No. 20 of 1994, which was partly allowed and the petitioners were directed to reinstate in service with continuity of service, but without backwages.

5. Thereupon, the petitioner filed a revision before the Industrial Court namely Revision No. 12 of 2010. Whereas, the respondent Municipal Council filed Revision No. 2 of 2010, challenging the judgment and order passed by the Labour Court dated 22nd December, 2009.

6. Both the revisions came to be dismissed vide judgment and order dated 1st July, 2015. The writ

petition filed by the Municipal Council raising a question to the validity and correctness of the learned Industrial Court as well as the learned Labour Court i.e. writ petition No. 1312 of 2016, came to be dismissed on 5th March, 2018 too.

7. In the circumstances, it is evident that the order of the reinstatement granted by the learned Labour Court has been maintained by this Court. The order passed by the High Court on 5th August, 2018 has attained finality, in absence of any challenge raised to the same.

8. The present writ petition is at the behest of the employees. It raises a limited issue as regards backwages.

9. The learned counsel for the respondent Municipal Council while opposing the present writ petition has drawn attention to a document which according to the learned counsel for the respondent is an undertaking. It is pointed out that in the undertaking the petitioner agreed to waive or to give up his right to claim any backwages for the period prior to reinstatement. He accordingly submits that in view of the said undertaking as the petitioners have given up the right to claim backwages, the petition needs to be dismissed.

10. On the other hand, the learned counsel for the petitioners points out that said undertaking is one sided and it was obtained under pressure as the petitioners left with no other option than to sign said undertaking as at the relevant time it was the question of survival of the petitioners for the reason that petitioners were unemployed.

11. In the above referred backdrop, I have perused the said undertaking and after going through the conditions of it, I find substance in contentions of the learned counsel for the petitioners that the undertaking is one sided because it says that, the petitioners will not claim any backwages for the period prior to the reinstatement, the petitioners will not claim any permanency in the job, the petitioners will work as a daily wager and respondent Municipal Council may remove them at any time without notice.

12. To deny the rightful claim of the employee to claim backwages or to claim permanency or in case of termination to raise challenge to such termination, citing of such undertaking would amount to taking away the legal rights.

13. The Hon'ble Supreme Court of India in a case of *Pioneer Urban Land & Infrastructure Limited*

*Vs. Govindan Raghavan and others*¹ had an occasion to consider when the contract is said to be unfair and unreasonable. The Hon'ble Supreme Court of India in the said matter held thus:

“In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors., MANU/SC/0439/1986: (1986) 3 SCC 156 this Court held that :

“89. ... Our judges are bound by their oath to ‘uphold the Constitution and the laws’. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable Clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of

1 AIR 2019 SC 1779

rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction....”

14. The statutory rights cannot be permitted to take away by such undertaking which is obtained taking benefit of disadvantageous position of an employee who is unemployed after his termination and striving hard for survival. The Hon’ble Supreme Court of India has noted the drastic consequences of termination (*Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya*²), namely source of income gets dried up, entire family suffers grave adversities, they deprived of the source of sustenance, the children are deprived of nutrition food and all opportunities of education and advancement in life and at times, the family has to borrow from the relatives and other acquaintances to avoid starvation. Hence, the employee who is out of employment, to come out of such drastic situation, many times left with no other option to sign such one sided, unfair and unreasonable undertaking. In the circumstances, it cannot be said that the undertaking

2 (2013) 10 SCC 324

was given by the respondent was with free will, which is the prerequisite to make a contract valid.

15. The Hon'ble Supreme Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya* (supra) has held thus :

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee,

who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

16. As the learned Labour Court and Industrial Court have concurrently held that the termination of the respondent was contrary to the provision of law, in view of the above referred observations of the Hon’ble Supreme Court of India in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya* (supra), I have no hesitation to hold that the respondent is entitled for grant of backwages.

17. Moving further it has come on record that despite the directions by the learned Labour Court to reinstate the petitioners vide judgment and order dated 22nd December, 2009 and in absence of any stay to the reinstatement either at the stage of revision or during the pendency of the writ petition filed by the Municipal Council before this Court, the petitioners were not reinstated in service. But on dismissal of the writ petition they were reinstated on 4th January, 2019.

18. Shri Saboo, learned counsel for the petitioners on instructions fairly states that, his clients are ready to not press the prayer for grant of backwages for the period from the date of termination till the date of judgment but they would claim backwages from the

date of the judgment of the Labour Court till the date of reinstatement.

19. Admittedly, as observing herein above, despite the directions of the learned Labour Court or in absence of any stay to the order of reinstatement, the petitioners were not allowed to join the duty by reinstating, for about nine years. Hence, in this case the petitioner cannot be held at fault in joining the duties after the learned Labour Court granted reinstatement.

20. In the circumstances, I am of the opinion that the petitioners are entitled to receive the backwages from the date of judgment i.e. 22nd December, 2009 till the date of reinstatement. Accordingly, I pass the following order.

- i. The Writ Petition No. 1312 of 2016 is dismissed and the Writ Petition No. 6884 of 2017 is partly allowed;
- ii. The respondents are directed to pay backwages to the petitioners from the date of judgment of learned Labour Court dated 22nd December, 2009 till the date of reinstatement;
- iii. The Municipal Council, Achalpur shall make the payment of backwages within eight months from today;
- iv. The writ petitions are disposed of.

[ANIL S. KILOR, J.]