

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

902. WRIT PETITION No. 3946 of 1999

Gram Panchayat, Bhada,
through its Sarpanch Mahendranath S/o Jaywantrao
Bhadekar, age 32 years Taluka AUSA District Latur.

...Petitioner

VERSUS

Nandu S/o Baburao Partale,
age 42 years R/o Bhada Tal. AUSA Dist. Latur.

...Respondent

Mr. N.P. Patil-Jamalpurkar, Advocate for petitioner.
Mr. A.N. Irpatgire, Advocate for respondent.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. This matter was heard at length on 20th June, 2019 and was posted today for passing orders, so as to enable the respondent to indicate as to whether he was reinstated in service. It is informed that the respondent was reinstated on daily wages in March 2004 and he has superannuated in November, 2013.

2. The petitioner-Gram Panchayat is aggrieved by the judgment of the Labour Court, dated 16th June, 1999, by which, Complaint (ULP) No. 58 of 1996 filed by the respondent was allowed. His oral termination with effect from 28th July, 1996 and

his resignation on 19th August, 1996 are held to be illegal and he was granted reinstatement with continuity in service and full back-wages. This Court had granted *ad-interim* relief in terms of Prayer Clause (C) on 16th August, 1999 and the petition was admitted on 20th June, 2001. Interim relief was continued. Consequentially, the impugned judgment was stayed.

3. Shri Patil, the learned Advocate for the petitioner has strenuously criticised the impugned judgment. He drew my attention to the grounds formulated in the memo of the petition and submits that the impugned judgment is perverse and erroneous. The learned Advocate for the respondent submits that this petition should not be entertained as the petitioner is not aware of the statutory revisional remedy under section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

4. This Court has laid down a law in the matter of *Engineering Employees Union Vs. Devidayal Rolling & Refinery Pvt. Ltd. [1986 (52) FLR 40 = 1986 Mh.L.J. 331]*, and in the matter of *Clifford Rebello Vs. Hotel Oberoi Towers [(2001) III CLR 805]*, that a writ petition directly challenging the order of the Labour Court under the M.R.T.U. and P.U.L.P. Act, 1971, should not be entertained by this Court. However, since this petition was admitted by this Court, I am not

inclined to entertain the objection of maintainability.

5. It was the contention of the workman that the petitioner approached him on 28th July, 1996 and forcibly obtained his resignation. He was disallowed from performing his duty as a Peon on regular basis. It is incorrectly recorded in paragraph No.2 of the impugned judgment that he was working as a Clerk. He put in 12 years of service. He immediately informed the petitioner that he hadnot resigned voluntarily. He moved an application on the same date 28th July, 1996 indicating that his resignation should not be accepted and it is involuntary.

6. The petitioner-management took a stand that the workman had voluntarily resigned on 19th August, 1996 and the resignation was placed before the Gram Panchayat on 26th August, 1996 and the same was accepted by resolution No. 4 on the same day. The Labour Court considered the evidence on record. It concluded that the burden lies on the management to prove that the resignation was voluntary in the face of the employee having immediately informed the management in writing that he has not resigned.

7. Per contra, the petitioner took a stand that the respondent was absent from duty from 16th July, 1996 and he

tendered the resignation on 19th August, 1996. It appears from the said resignation that the workman had been frustrated as the Gram Panchayat had retained his 16 months' salary. Upon being frustrated, he appears to have submitted his resignation in desperation. The Labour Court has rightly held that this resignation cannot be said to be voluntary as he had stated that since the management was not paying him his regular salary for a long duration that he was frustrated in the employment.

8. The Labour Court has also perused form II under Rule 3(3) of the Bombay Village Panchayat Rules and concluded that the resignation tendered was not in the form as it was required. The text of the resignation indicates the frustration of the employee. The management has accepted the resignation within seven days without even considering that the employee was not resigning unconditionally because he was not being paid his regular salary. In this backdrop, in my view, the Labour Court has rightly held that the resignation was involuntary and at the same time, the said resignation was accepted in undue haste.

9. The Hon'ble Apex Court has held in the matter of ***Dr. Prabhu Atri Vs. State of U.P. and others, (2003) 1 Supreme Court Cases 701***, in paragraph No. 10 as under : -

“ 10. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the

materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9.1.1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a 'resignation', it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer (supra) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the Hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9.1.99 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her so-called resignation. The words 'with immediate effect' in the said letter could not be given undue importance dehors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the Hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9.1.1999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramachandra Iyer (supra) the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9.1.1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the Writ Petition."

10. The learned Advocate for the respondent submits that the petitioner has not paid him his regular salary from March 2004 till November 2013. This issue cannot be dealt with in this

petition and the respondent-employee would be at liberty to take recourse to such a remedy as is permissible in law.

11. The learned Advocate for the Gram-Panchayat has vehemently submitted that 100% back-wages cannot be granted when the employee has not led evidence to indicate that he was in search of an alternate employment and despite his best efforts, he could not secure any employment and, therefore, he cannot be granted full back-wages. He relies upon paragraph No.18 of the Hon'ble Apex Court in the matter of *J.K.Synthetics Ltd vs. K.P. Agrawal and another*, [(2007) 2 SCC 433], in support of his contention. The learned Advocate for the employee strenuously submits that every illegal termination should be met with an order of reinstatement and full back-wages. In-voluntary unemployment was foisted upon the employee by the management for which he cannot be blamed.

12. In my view, while granting full back-wages, it has to be seen as to whether the workman has established that he was not in any employment. Secondly, it also has to be established that the paying capacity of the employer is such that the employer can shoulder the burden of full back-wages. The petitioner-employer in this case is a Gram Panchayat. It is universally known that the Gram Panchayat has paucity of funds.

13. As such, in my view, placing reliance upon the judgments of the Hon'ble Apex Court in the matter of *Nicholas Piramal India Ltd. Vs. Harising*, [2015 II CLR 468] and *Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead) through Lrs.*, AIR 2018 Supreme Court 4534, awarding 50% back-wages would be an equitable relief.

14. This petition is, therefore, partly allowed only to the extent of back-wages, as directed above. Rule is made partly absolutely accordingly.

15. If the petitioner Gram Panchayat pays 50% back-wages to the respondent from 28th July, 1996 till February, 2004 within a period of 60 days, there shall be no interest on the said amount. However, if the said amount is not paid within 60 days, interest at the rate of 6% p.a. would be applicable from March 2004 till the amount is actually paid.

**(RAVINDRA V. GHUGE)
JUDGE**