

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1849 OF 2007
WITH CA/9131/2010 IN WP/1849/2007

Forest Development Corporation,
Maharashtra Ltd.,
Through its Divisional Manager,
Forest Project Division, Mandava Road,
Kinwat, Tq. Kinwat, Dist.Nanded -- PETITIONER

VERSUS

Prakash s/o Pandharinath Yashwantkar,
Age-44 years, Occu-Nil,
Near Panchayat Samiti, Kinwat,
Taluka Kinwat, Dist.Nanded -- RESPONDENT

Mr.P.L.Shahane, Advocate for the petitioner.
Mr.P.G.Deshmukh h/f Mr.H.A.Joshi, Advocate for the respondent.

(CORAM : Ravindra V.Ghughe, J.)

DATE : 26/09/2019

ORAL JUDGMENT :

1. The petitioner/Forest Development Corporation of Maharashtra, is aggrieved by the judgment and order dated 05/02/2007 delivered by the Labour Court by which Complaint (ULP) No.348/2005, filed by the respondent/workman, was allowed. The petitioner is also aggrieved by the judgment and order dated 02/03/2007 delivered by the Industrial Court, by which Revision

(ULP) No.10/2007 filed by the petitioner has been dismissed.

2. This Court considered the submissions of the litigating sides extensively and has passed a detailed order dated 18/04/2007.

3. Having considered the submissions of the learned Advocates for the respective sides and having gone through the order dated 18/04/2007 passed by this Court, it appears that this Court has practically concluded the matter. The petition was admitted and since the matter was to be heard finally subsequently, this Court observed that the back wages granted by the Labour Court to the respondent would be stayed.

4. The learned Advocate for the Management submits that pursuant to the detailed order dated 18/04/2007, the respondent was reinstated in service in May 2007. Thereafter, he was also granted promotion as a 'Forester'. He has superannuated from employment on 31/08/2019.

5. In my view, the issue that remains to be adjudicated upon in this petition, considering the peculiar facts recorded as above, would be as to whether the respondent would be entitled for back wages.

6. The learned Advocate for the Management strenuously contends that the respondent does not deserve to be granted back wages for the reason that the Labour Court has not assigned any justification for granting back wages. The respondent was dismissed from service on account of unauthorized absenteeism for a period of about 45 days. Another reason for dismissing him from service was that he had attempted to exert pressure on the Management of the Corporation through certain politicians.

7. The learned Advocate for the respondent/workman submits that as he was dismissed pursuant to disciplinary proceedings and such punishment was found to be illegal, he should be paid full back wages. He further adds that if a termination of an employee is found to be illegal, the Management should not be rewarded by depriving the employee of the back wages.

8. I find from the record and it is also conceded by the learned Advocates that though an issue of disciplinary enquiry was a subject matter of adjudication before the Labour Court, the 2 issues as to whether the complainant/workman proves that the enquiry is vitiated on account of non observance of the principles of natural

justice and whether the complainant/workman proves that the findings of the Enquiry Officer are perverse, were not cast by the Labour Court, since the workman filed a purshis before the Labour Court that he does not desire to question the legality and the validity of the enquiry and the findings of the Enquiry Officer. The Law laid down by the Hon'ble Apex Court in the matter of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], which Law is still standing and has crystallized over the past 5 decades, was not required to be followed in view of the purshis.

9. In view thereof, the charges held to be proved by the findings of the Enquiry Officer vide his report, are deemed to have attained finality. In this backdrop, the only scope for judicial review, in the complaint, by the Labour Court was as to whether the punishment awarded to the employee was shockingly disproportionate.

10. I find that though the enquiry was sustained, the Labour Court ventured into considering the legality of the enquiry by framing issue No.2 as to 'whether the mis-conduct as alleged, is proved in the departmental enquiry' and had answered the issue in the negative. This could not have been done, being impermissible after the enquiry

and the findings of the Enquiry Officer, are sustained. The Labour Court has thus erred.

11. In the above backdrop, the issue would be as to what should be the quantum of punishment to be awarded to the delinquent. The absence of 45 days cannot be said to be so long an absence that the Court could conclude that the employee has lost interest in employment and does not desire to continue with his employment. The period of remaining absent for 45 days would therefore not amount to a grave and serious misconduct, in the facts of this case, so as to warrant the punishment of dismissal from service.

12. However, mobilizing politicians to exert pressure on the Management of the Corporation, is undesirable. This Court has facilitated the reinstatement of the respondent by order dated 18/04/2007 and the respondent employee has now superannuated on 31/08/2019. It would be quite harsh to cause an interference in such matters, keeping in view of the law laid down by the Hon'ble Supreme Court in Kum.Pushpa Ramdas Zatake Vs. The Divisional Controller, MSRTC, in Special Leave to Appeal No.22618/2017 decided on 09/07/2018. Nevertheless, if the employee is deprived of a percentage of back wages, it would amount to a commensurate

punishment to the respondent.

13. In view of the above, this petition is partly allowed. The conclusions of the Labour Court while answering issue No.2, are quashed and set aside. Similarly, the conclusions of the Labour Court declaring ULP against the petitioner under Item 1(a), (b), (d) and (e) under Schedule IV of the MRTU and PULP Act, are quashed and set aside. In so far as the quantum of punishment is concerned, I find that it would be appropriate to deprive the respondent/employee of 60% of the back wages for the period 14/03/2005 till 01/05/2007.

14. Needless to state, considering the earlier order of this Court dated 18/04/2007, the petitioner/Management would calculate the back wages to the extent of 40% of the last drawn wages of the respondent as in February 2005 and shall make the payment to the respondent within 2 months from today. So also, the Management shall ensure that the retiral benefits of the respondent, including pensionary benefits, shall be paid in accordance with the rules considering the fact that the respondent has recently superannuated on 31/08/2019.

15. The learned Advocate for the respondent worker has prayed for promotional benefits with retrospective effect. He submits that this issue be kept open.

16. This Court, dealt with Civil Application No.3356/2013 filed by the respondent/employee and delivered an order on 26/07/2013 paving the way for the conditional promotion of the respondent/workman without prejudice to the rights of the parties in this petition.

17. Since I have concluded in this judgment that the charge leveled upon the respondent has been proved in view of the enquiry having not been vitiated and the findings of the Enquiry Officer having not been interfered with, the promotion of the workman shall be restricted to the date on which he was granted the said promotion under Court's order. In the event the respondent desires to make a representation to the Corporation to consider his case sympathetically, it would be open to the Corporation to consider such representation. However, if the Corporation rejects such a representation in view of the conclusions drawn by this Court, that would not lead to a new cause of action.

18. Rule is made partly absolute in the above terms.
19. Pending civil application, if any, stands disposed off.

(Ravindra V.Ghuge, J.)