

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

WRIT PETITION NO.3404 OF 2018

GRAMPANCHAYAT PIMPALGAONROTHA THROUGH SARPANCH ASHOK
MAHADEO GHULE
VERSUS
RIYAZ PIRMOHMMAD CHAUGULE AND OTHERS

...

Advocate for the Petitioner : Shri Barde Parag Vijay.
Advocate for Respondent 1/ Complainant : Shri Bajaj Anil S.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th March, 2019

Per Court:

1 Despite service of court notice, no appearance is entered on behalf of Respondent Nos.2 and 3.

2 The Petitioner/ Gram Panchayat is before this Court challenging the interlocutory order passed by the Labour Court dated 08.06.2017 by which, the Respondent/ employee has been granted interim relief by way of reinstatement, in Complaint (ULP) No.71/2016. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 26.02.2018 by which, Revision (ULP) No.25/2017 filed by the Petitioner, has been dismissed.

3 I have extensively heard the submissions of the learned Advocates for the respective sides.

4 There is no dispute that the Respondent/ employee joined employment on 01.12.2012 and was terminated from service pursuant to leveling allegations, by order dated 04.11.2016 made effective from 01.11.2016. The termination is, therefore, by retrospective effect.

5 The learned counsel for the Petitioner has strenuously canvassed that there cannot be an order of reinstatement in service by way of interim relief as it amounts to granting final relief at an interim stage.

6 The learned counsel for the Respondent/ employee has strenuously opposed this contention and has prayed that this petition be dismissed with costs.

7 It is no longer res-integra that interim relief in the nature of reinstatement in service, is an anathema. Even if the court concludes that there is a strong prima facie case, in cases of termination of service, the court is expected to workout a solution so as to ensure that the complainant is granted some relief in the nature of interim relief. In the matter of *Executive Engineer, MSEB, Morshi vs. Industrial Court and another*, 2001 (3) Mh.L.J. 320 : (2002) IV LLJ 292 Bom, this Court has ruled that there cannot be reinstatement by way of an interim relief.

8 Insofar as the termination with retrospective effect is concerned, the learned Division Bench of this Court has held in the matter of *Assaram Raibhah Dhage vs. Executive Engineer, Sub Divisional*,

Mula, 1988 (4) Bom. C.R. 158 : 1989 II CLR 331 that even if an employee is a temporary, a daily wager or permanent, there cannot be termination with retrospective effect.

9 The learned counsel for the Petitioner places reliance upon the judgment of this Court in the matter of **Narsinggirji Mills vs. Abdul Rashid Ladlesab Shaikh, 1993 (2) CLR 866 : 1994 (2) LLJ 152** (WP No.3878/1993 (Bombay) decided on 28.09.1993) wherein, this Court has concluded that an employee cannot be foisted upon the employer at an interim stage. Instead of granting reinstatement, an amount of Rs.2500/- per month was directed, in 1993.

10 The learned counsel for the Respondent/ employee has taken instructions from the Respondent, who is present in the Court, that if he is paid an amount of Rs.4000/- per month from 01.11.2016 until the complaint is adjudicated upon, he would be agreeable.

11 In the light of the above, though on the one hand, the termination with retrospective effect is unsustainable and on the other hand, reinstatement at an interim stage cannot be sustained, I find that the request made by the Respondent/ employee is reasonable and fair in view of the law laid down by this Court in **Narsinggirji Mills** (supra).

12 In the light of the above, this Writ Petition is partly allowed. The direction of the Labour Court dated 08.06.2017 is modified as under :-

- (a) The Petitioner/ Gram Panchayat shall deposit the subsistence allowance of the Respondent/ employee, at the rate of Rs.4000/- (Rupees Four Thousand) per month, from 01.11.2016 till 31.03.2019, in the Labour Court within SIX WEEKS from today.
- (b) The Petitioner/ Gram Panchayat shall further deposit an amount of Rs.4000/- (Rupees Four Thousand) per month on or before the 10th day of each month, beginning from the month of April, 2019, before the Labour Court.
- (c) The Respondent/ employee shall withdraw the above amounts as subsistence allowance from the Labour Court, unconditionally and which would include the arrears as well.
- (d) If the above directions are not complied with scrupulously, this order shall stand recalled and the impugned order of the Industrial Court dated 26.02.2018 shall stand restored and in which case, this petition shall be deemed to have been dismissed.
- (e) If the above directions are complied with, the Petitioner/ Gram Panchayat would be at liberty to file the charge sheet against the Respondent/ employee before the Labour Court on or before 15.05.2019.
- (f) The Complainant/ Employee would be at liberty to tender the

written explanation to the charge sheet on or before 30.06.2019.

- (g) Thereafter, the Petitioner/ Gram Panchayat would be at liberty to lead evidence by conducting an enquiry before the Labour Court for proving the charges levelled upon the complainant.
- (h) The Labour Court shall consider the complaint in the light of the evidence on record.

kps

(RAVINDRA V. GHUGE, J.)