

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

**LETTERS PATENT APPEAL NO. 53 OF 2009
IN
WRIT PETITION NO. 1469 OF 2008**

Atmaram s/o. Raosaheb Gawali,
Age 43 years, Occu. Service,
R/o. Chincholirao Wadi,
Tq. & Dist. Latur.

....Appellant.

Versus

Manjara Shetkari Sahkari Sakhar
Karkhana Ltd., Thro. Administrative
Officer Vijay Mukundrao Kale,
Age 50 years, Occu. Service,
R/o. Vilasnagar, Tq. & Dist.
Latur.

....Respondent.

Mr. Vivek Bhavthankar, Advocate for appellant.

Mr. V.D. Hon, Advocate for respondent.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATE : 16/01/2019**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed to challenge the judgment and order of the learned Single Judge of this Court delivered in Writ Petition No.1469/2008. By this judgment, the learned Single Judge has modified the decision given by the Labour Court and set aside the order of Labour Court by which direction was given to the employer to pay 100% backwages to the employee. Both the sides are heard.

2) The limited point is involved in the present matter. On the ground that proper procedure for removal was not followed and it was high handedness of the employer to remove the employee, the order of removal is set aside by the Labour Court. This order is confirmed by first revisional Court and then by the learned Single Judge of this Court. The submissions made show that ULP came to be filed in Labour Court on 18.11.1999 and it came to be decided on 8.10.2007. Even after decision of the revision, the employee was not allowed to resume the duty and only when the learned Single Judge expressed that hearing will not be given to the employer, the employee was allowed to resume duty on 26.2.2008.

3) On the entitlement of the employee to get 100% backwages, both the sides have cited some reported cases. The learned counsel for appellant placed reliance on the case reported as **AIR 2014 SC (Supp) 121 [Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors.]**. The relevant observations of the Apex Court after considering the law are at para No. 33. The proposition which are culled out by the Apex Court and which are relevant for the present purpose are at sub-para No. (iii) and (v) of para 33, which are as under :-

"33. The propositions which can be culled out

form the aforementioned judgments are :-

(i) ...

(ii) ...

(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

(iv)

(v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In

such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employers obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

4) In the present matter, the appellant was working on the post of labour and ordinarily the persons working in the sugar factory are not highly educated. This Court is restricting itself to the period like date of complaint i.e. 18.11.1999 to the date of resuming the duty by employee i.e. 26.2.2008 as one admission given by the employee before the Labour Court was brought to the notice of learned Single Judge. He admitted that he had virtually abandoned work. This version of illiterate person can be considered from different angles. In any case, when this Court is not giving backwages in respect of the period prior to 18.11.1999, there is no need to go into the details mentioned of that claim.

5) The learned counsel for employer placed reliance on cases reported as **(2005) 2 SCC 363 [Kendriya Vidyalaya Sangathan and Anr. Vs. S.C. Sharma]** and **(2007) 2 SCC 433 [J.K. Synthetics Ltd. Vs. K.P. Agrawal and Anr.]**. On the basis of observations made by the Apex Court, the learned counsel for employer submitted that there needs to be pleading with regard to the absence of work, source of livelihood to the employee who was removed from the service or atleast there should be some specific evidence given on such possible contention before the Labour Court in the matter of complaint. He submitted that as there was no such specific pleadings and as there was admission of aforesaid nature, the learned Single Judge has not committed any error in refusing the backwages.

6) This Court has already quoted the view of the Apex Court which shows that if the Court comes to the conclusion that it was high handedness on the part of the employer due to which the employee lost job, the Court is expected to go with the presumption that the employee is entitled to get the backwages. The Apex Court has further considered the difficulties which the employee faces and the possibility of causing delay in Court in deciding his matter. In the present matter also, there are circumstances like the employee had

approached the Court on 18.11.1999 and even after getting the order of reinstatement he was allowed to join the duties on 26.2.2008. Atleast in respect of this period, it was necessary to the employer to show that for this period the employee is not entitled to get full wages. In view of these circumstances, this Court holds that interference is warranted in the decision given by the learned Single Judge to give employee relief to the extent of aforesaid period. In the result, the appeal is allowed partly. The employer is to pay full backwages to the employee for the period starting from 18.11.1999 to 26.2.2008. The amount is to be paid within 45 days from the date of this order and if the amount is not paid within this period, the amount shall carry interest at the rate of 8% p.a. and interest will be calculated from 18.11.1999.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/