

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3575 OF 2007

Sangamner Muicipal Council,
Sangamner, through its Chief officer
Shri Yogesh Ramrao Godse
Age 27 years, Occ. Service
R/o Sangamner, Dist. Ahmednagar. ..Petitioner

Versus

Baliram Vishnusa Billade
age 48 years, Occ. Business
R/o 1256, Navghar Galli,
Sangamner, Dist. Ahmednagar. ..Respondent

...
Advocate for Petitioner : Shri V S Bedre
Advocate for Respondent : Shri V N Upadhye
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2019
...

ORAL JUDGMENT:-

1. This matter was heard at length on 7.6.2019 and 21.6.2019.
2. The learned Advocate for the respondent submits today, on instructions from the respondent present in the Court that as the respondent is due for retirement on 31.10.2019, he would like to have a golden handshake with the petitioner and is willing to reduce his claim for backwages to 25%, though the Industrial Court had granted 50%.

3. Having considered the strenuous submissions of the learned Advocates for the respective sides, I have gone through the record available. The respondent suffered two terminations. The first termination was in oral form on 15.10.1992. He preferred Complaint (ULP) No.38 of 1993. The Municipal Council then issued a second termination order in the form of a dismissal on 24.4.1993, after levelling a charge of doubtful integrity. The employee challenged the same in Complaint (ULP) No.100 of 1993 before the Labour Court and by judgment dated 30.4.2002, the said complaint was dismissed as the earlier complaint was partly allowed. Reinstatement was refused. Following is the order passed by the Labour Court:-

“1. Complaint (ULP) No.38 of 1993 is hereby partly allowed.

2. The respondent is directed to pay to the complainant backwages @ Rs.725/- per month from the period from 15.10.1992 to 29.4.1993 within one month and also to pay an amount of R.1000/- for the cost of Complaint (ULP) No.38 of 1993.

3. The relief of reinstatement and continuity of service is hereby rejected in Complaint (ULP) No. 38 of 1993.

4. Complaint (ULP) No.100 of 1993 is hereby dismissed.

5. The parties are directed to bear their own cost of this complaint. ”

4. The respondent approached the Industrial Court by filing Revision (ULP) No.46 of 2002. By judgment dated 27.4.2007, his Revision Petition was allowed. He was granted reinstatement in service with 50% backwages.

5. The petitioner reinstated the respondent on 22.8.2008 and he would be attaining the age of superannuation on 31.10.2019.

6. The Municipal Council claimed to have conducted a departmental enquiry. The Labour Court concluded that the enquiry was vitiated and permitted the petitioner to prove the charges before the Labour Court. After considering the evidence recorded before the Labour Court, it rightly concluded that the standard of proof in domestic enquiry is conceptually distinct and different from the quality of evidence required in a criminal trial. It, therefore, held that the charges are proved against the respondent.

7. The Industrial Court has interfered with the said findings of the Labour Court after re-assessing the oral and documentary evidence recorded before the Labour Court. In my view, there are limitations upon the Industrial Court in re-appreciating the evidence

under its revisional powers flowing from Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). So also, as charges in service jurisprudence can be proved against an employee on the preponderance on the principles of probabilities, a different view than the one taken by the employer was not possible.

8. However, it cannot be ignored that the employee has been reinstated by the petitioner and he has been continued in the employment for the last 11 years and is due for retirement in three months' time. In such a situation, I deem it appropriate to rely upon the view taken by the Honourable Apex Court in the matter of Kumari Pushpa Ramdas Zatake Vs. The Divisional Controller - Civil Appeal No. 6171 of 2018, decided on 9.7.2018, wherein, it is held that a quietus should be accorded in such matters.

9. In so far as the issue of backwages is concerned, the employee has made a statement before the Court that he would claim only 25% backwages. I find that the said statement could be considered in view of the law laid down by the Honourable Apex Court in the matter of Rajasthan State Road Transport Corporation, Jaipur Versus Phool Chand (dead) through L.Rs. [AIR 2018 SC 4534].

10. As such, this petition is partly allowed and the litigation between the parties is accorded a quietus by modifying the direction of the Industrial Court to the extent of the grant of backwages.

11. The respondent would now be entitled for 25% of the backwages from his date of termination to the date of his reinstatement. If the Municipal Council pays the said backwages within three months, there shall be no interest on the said amount. If they fail to pay the said amount as per this direction, the Council shall have to pay interest on the said amount at the rate of 6% per annum from the date of the judgment of the Industrial Court till the amount is actually paid.

12. Needless to state, considering the judgment dated 17.12.2016 delivered by this Court in Writ Petition no.6875 of 2013 filed by the employee for seeking regularization which has been granted, he would be entitled for such scale of wages, as is admissible in law.

13. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

...