

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO.4503 OF 2007
WITH
CIVIL APPLICATION NO.8357 OF 2019**

1 The Managing Director,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

2 The General Manager,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

Petitioners

versus

Ankush Fakira Chavan,
Age: 57 years, occu: nil
R/o Barshi, Tq. Barshi,
Dist. Solapur

Respondents

**WRIT PETITION NO.5216 OF 2007
WITH
CIVIL APPLICATION NO.8358 OF 2019**

1 The Managing Director,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

2 The General Manager,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

Petitioners

versus

Ankush Fakira Chavan,
Age: 57 years, occu: nil
R/o Barshi, Tq. Barshi,
Dist. Solapur
Died through his LRs

Respondent

1 Meena w/o Ankush Chavan
Age: 61 years, occu: household

2 Ganesh s/o Ankush Chavan'
Age: 35 years, occu: service

3 Mahesh S/o Ankush Chavan
age: 33 years, occu: service

- 4 Dinesh S/o Ankush Chavan
Age: 31 years, occu: service
- 5 Vaishali D/o Ankush Chavan,
Age: 43 years, Occu: Household

All R/o Block N o.850/4, Plot No.15
Jijau Nagar, Upalai Road
In front Shiv Mindar, Barshi,
Tq. Barshi, Dist. Solapur

WRIT PETITION NO.5217 OF 2007

- 1 The Managing Director,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad
- 2 The General Manager,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

Petitioners

versus

Govardhan Gopal Tambe,,
Age: 62 years, occu: nil
R/o Barshi, Tq. Barshi,
Dist. Solapur

Respondent

WRIT PETITION NO.5486 OF 2007

- 1 The Managing Director,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad
- 2 The General Manager,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

Petitioners

versus

Ramhari Kashinath Doifode,
Age: 47 years, occu: nil
R/o Osmanabad, Tq. and
Dist. Osmanabad

Respondent

WRIT PETITIN NO.5805 OF 2007

- 1 The Managing Director,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

2 The General Manager,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

Petitioners

versus

Govardhan Gopal Tambe,
Age: 62 years, occu: nil
R/o Barshi, Tq. Barshi,
Dist. Solapur

Respondent

WRIT PETITION NO.5487 OF 2007

1 The Managing Director,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

2 The General Manager,
Osmanabad District Central
Co-operative Bank Ltd.,
Osmanabad

Petitioners

versus

Ramhari Kashinath Doifode,
Age: 47 years, occu: nil
R/o Osmanabad, Tq and
Dist. Osmanabad

Respondent

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Mr. K.J. Ghute Patil advocate for the petitioners

Mr. M.U. Shelke advocate for the respondents.

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CORAM : RAVINDRA V. GHUGE, J.

Date: July 23, 2019

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ORAL JUDGMENT

1 I have heard the learned Advocates for the respective sides.

2 It is submitted that, the first three Writ petitions bearing Nos.4503, 5487 and 5805 of 2007 are rendered infructuous as these are the petitions filed by the bank, challenging the orders of reinstatement. The original complainants Viz. Ankush Fakira

Chavan, Govardhan Gopal Tambe, Ramhari Kashinath Doifode have attained the age of superannuation on 5.10.2007, 4.11.2003 and 9.4.2018, respectively. Shri Chavan retired before he could be reinstated. Shri Tambe was actually not granted reinstatement and Shri Doiphode was already reinstated on 13.12.2007. Hence, Writ Petition No.4503/2007, 5487/2007 and 5805/2007 are disposed off. Rule is discharged.

3 As such, writ petition Nos.5216, 5217 and 5486 of 2007 can be entertained as these petitions have been filed by the bank for challenging the back wages granted by the Labour /Industrial Courts.

4 These three employees were suspended by the bank on 11.3.1996 and all of them were terminated by order dated 31.10.1996. They approached the Labour Court for challenging their terminations. The Labour Court set aside the termination orders of these employees. Shri Chavan and Shri Doiphode were granted reinstatement in service with 75% back wages. Shri Tambe was granted compensation @ 75% of the back wages, in lieu of reinstatement in service. Continuity was granted to all the three employees.

5 Shri Chavan superannuated on 5.10.2007 before he could be reinstated. Shri Doiphode was reinstated on 13.12.2007 who continued in employment and superannuated on 9.4.2018. Shri Tambe was granted compensation in lieu of reinstatement @

75% of his back wages till his date of retirement.

6 The Industrial Court entertained the B.I.R. Appeals No.1, 2 and 3 of 2005 along with Appeals No.8, 9 and 10 of 2005. The bank as well as the employees preferred such Appeals.

7 In so far as Shri Doiphode is concerned, the learned Advocate for the employees submits that this Court had passed an interim order on 24.10.2007 followed by an order dated 14.7.2008. This Court directed the bank to deposit 50% of the back wages/compensation granted by the Courts below. Consequentially, the bank deposited such 50% of the amounts, which are actually 37.5% of the 100% back wages, keeping in view that the Courts below had granted 75% back wages. These employees have withdrawn the said amounts of 37.5% of back wages.

8 Learned Advocate for Shri Doiphode submits that as he was continued in employment upon his reinstatement and he worked for ten years and four months prior to his retirement, he is agreeable to only 50% of the back wages. In so far as Shri Chavan and Shri Tambe are concerned, learned Advocate submits that as both of them superannuated without reinstatement, the amount of back wages granted to them @ 75% should not be interfered with.

9 Learned Advocate for the bank has strenuously canvassed

that none of these employees should be granted back wages since the bank is in financial difficulties.

10 The Honourable Apex Court has recently delivered a Judgment in the matter of ***Rajasthan State Road Transport Corporation versus Phoolchand (deceased) through legal heirs, AIR 2018 SC 4534***, by which the Honourable Apex Court has held that 50% back wages can be granted after considering the overall circumstances. The Honourable Apex Court, in the matter of ***Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324***, has held that when the order of termination is set aside for being illegal and unemployment is foisted on an employee illegally, attending circumstances must be considered and 100% back wages can be granted.

11 In so far as the case of Doiphode is concerned, I find that the statement made by the learned Advocate on instructions, is fair. Since, he was reinstated in service and worked for more than ten years, it would be appropriate to consider the financial difficulties of the bank and grant 50% back wages instead of 75%.

12 Writ Petition No.5487/2007 is, therefore, partly allowed and the order of the Labour/Industrial Courts is modified only to the extent of the quantum of back wages. The bank therefore, shall deposit the remainder amount of 12.5 % of the back wages in

the case of Shri Doiphode, in this Court, within 30 days from today failing which the amount shall carry interest @ 6% per annum from 2007 until the amount is actually paid. After the said amount is deposited, Shri Doiphode will be at liberty to withdraw the said amount, without conditions, by placing on record his recent photograph, permanent address proof along with his cell phone number and copy of his Aadhar card or election commission voters ID. Rule is made partly absolute.

13 In the case of Shri Chavan and Shi Tambe, it is obvious that both are identically placed. Shri Chavan was granted reinstatement and the order was not complied with by the bank. In the meanwhile, he superannuated. Shri Tambe was not granted reinstatement and was granted 75% back wages in lieu thereof. In these circumstances, I deem it proper to allow 75% wages to be paid to Shri Chavan and Shri Tambe from the dates of their termination 31.10.1996 till their dates of superannuation which is 5.10.2007 and 4.11.2003, respectively. This would be an equitable relief so as to compensate both of these employees adequately.

14 As such, Writ Petition No.5216/2007 is partly allowed by modifying the order of reinstatement in service with the direction to pay 75% of the back wages to Mr. Chavan. Rule is made partly absolute accordingly. In Writ Petition No.5217/2017, no interference is called for and the petition is disposed off as Shri

Tambe has already been granted 75% back wages as compensation in lieu of reinstatement. Rule is discharged.

15 This amount of 75% back wages shall be deposited by the petitioner bank in this Court within 30 days from today, failing which the said amount shall carry interest @ 6% per annum from the date of the filing of these petitions until the amount is actually paid. After the said amount is deposited Shri Chavan and Shri Tambe will be at liberty to withdraw the said amount without conditions by placing on record their recent photographs, permanent address proof along with cell phone numbers and copy of the Aadhar card or election commission voters ID.

16 So far as the amount of gratuity and pensionary benefits is concerned, it is expected that the petitioner would take appropriate steps within a period of six weeks from today in view of the fact that all these employees have been granted continuity of service till the dates of their superannuation.

17 The Civil applications, pending in all these petitions, do not survive and stand disposed off.

(RAVINDRA V. GHUGE, J)