

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9047 OF 2019

Veronica Kashinath Pandit,
Age: 39 years, Occu: service,
R/o Khokar, Tq.Shrirampur,
Dist.Ahmednagar

Petitioner
(Org. second party)

versus

Shri Sai Baba Sansthan Vishwastha Vyavastha
At Post Shirdi, Tq.Rahata,
Dist. Ahmednagar
Through its Chief Executive Officer

Respondents
(Org. First party)

Mr. P.V. Barde advocate for the petitioner
Mr.N.R. Bhavar advocate for respondent

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CORAM : **RAVINDRA V. GHUGE, J.**

Date: July 26, 2019

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ORAL JUDGMENT

1 Rule. Rule made returnable forth with and heard finally by the consent of the parties.

2 The petitioner is aggrieved, partly, by clause No.3 of the Award dated 26.6.2018, by which the Trial Court has declined back wages to the petitioner. The petitioner is the second party workman in Reference IDA No.61/2014, wherein, she had challenged her termination dated 9.6.2011, made effective from 13.6.2011. She had moved an application on 15.11.2010, seeking permission to pursue higher education in M. Sc. (Nursing). Since she had applied for such higher education, without permission of the management, she was terminated.

3 I am not required to go into the details of the facts of the case, for the reason that, after the impugned Award, setting aside the termination of the petitioner and granting her reinstatement in service with continuity, the management, which was first party employer in the Reference proceeding, filed Writ Petition No.11463/2018 in this Court. By order dated 16.10.2018, the petition was dismissed to the extent of the grievances of the management that the termination be restored and the order granting reinstatement with continuity of service, be set aside. As such, this Court sustained the said Award to the extent of the challenge posed by the management.

4 The learned counsel for the respondent Management has strenuously canvassed that, the petitioner is not entitled for back wages. He draws my attention to the admissions given by the petitioner, which were recorded in paragraph No.22 of the impugned Award. The petitioner admitted that, she was working as a Lecturer in the Supriya Didi Suley College of Nursing at Wadala. She had also moved writ petition No.6332/18 before the learned Division Bench of this Court, since she was not being granted approval as a Lecturer in the said college. She was also issued with an experience certificate having worked as an Associate Professor.

5 The learned counsel for the petitioner submits that, the petitioner has been honest enough before the learned Labour Court and had brought to the notice of the learned Labour Court

that, she was working in the said College and then in the Sugar Employee Hospital, Shrirampur as a Lecturer. She also confessed that, though the post and dignity of a Lecturer is higher than the post of a Nurse, she was getting higher pay scale as a Nurse and she was in need of higher earning.

6 In view of above, I do not find that this petition can be entertained to the extent of the claim for back wages by the petitioner.

7 The Honourable Apex Court has laid down the law in the matter of ***I. Laxmi Reddy versus A.P.S.R.T.C. & others and others*** (AIR 2008 SC 423), wherein, it has concluded that unless the Labour/Industrial Courts/tribunals grant consequential benefits along with reinstatement, the employee would not be entitled for back wages comparable with an equally placed employee.

8 While considering the request for parity and consequential benefits, it needs to be assessed as regards the reasons for terminating the petitioner.

9 It is apparent that the petitioner was not terminated for having indulged in acts subversive of discipline or good behaviour on the premises of the establishment or for misappropriation or for indulging in any abusive act or an act involving moral turpitude. She had acquired admission for a higher course, which would have improved her chances and

prospects in service. She only applied for higher education, without seeking permission of the management. Before joining the course, she applied for permission. The defence taken by the management was that, there are hundreds of Nurses working in the Shri Saibaba Sansthan Hospital and if any staff Nurse remains absent, it would create difficulties. The petitioner, without waiting for the decision of the management of granting leave, joined the M.Sc.(Nursing) course and remained absent from 6.9.2010 till her termination.

10 As such, though it cannot be countenanced and the conduct of the petitioner cannot be condoned, though for a good cause of acquiring higher qualifications, the fact remains that, the petitioner has been deprived of entire back wages for the period of her absence and also from her termination dated 13.6.2011 till 16.10.2018 when the petition of the management was dismissed, which is a period of about 8 years. This is a sufficient punishment to the petitioner.

11 In the above backdrop, the petitioner points out that, one Mrs. Meena Rajendra Bramhane, who joined on an identical post of staff Nurse on 1.5.2006, is drawing basic wages @ Rs.13,450/- and her gross wages are Rs.44,478/-. The petitioner has joined duties as a staff Nurse on 2.5.2006, one day later. Mrs. Bramhane is B.Sc. (Nursing) and the petitioner is M.Sc. (Nursing). Yet her basic wages are Rs.9,710/- and her gross wages are Rs.36,214/-.

12 In my view, unless there are specific reasons for denying consequential benefits, the Court should assess all factors before coming to a conclusion, either of granting or refusing to grant consequential benefits. There are instances of such orders which have come before this Court, wherein, invariably the Labour Courts/Industrial Courts have failed to use the words “consequential benefits” or “benefits incidental thereto” and “consequential thereto”. I do not find any specific reason assigned by the Labour Court in the impugned award, while refusing consequential benefits.

13 Learned Advocate for the petitioner submits, on instructions that, the petitioner is satisfied, if her basic wages are placed at par with Mrs. Bramhane, since her grade pay is maintained with Mrs. Bramhane and in fact her dearness allowance is slightly lesser than the dearness allowance being paid to Mrs. Bramhane. She does not desire any other quantum of difference of wages.

14 Considering all the above factors, I deem it appropriate to conclude that, this petition deserves to be partly allowed so as to grant consequential benefits to the petitioner along with reinstatement and continuity of service.

15 It is clarified that, such consequential benefits would be payable by way of difference in the basic pay from 10.1.2019 by equating the petitioner with Mrs. Bramhane.

16 Since the issue of grant of consequential benefits has been raised in this petition and as I have concluded that every Labour/Industrial Court needs to consider this aspect for grant of consequential benefits, depending upon attending circumstances, the learned Registrar (Judicial) of this Court shall circulate this order to all the learned Judges/Presiding Officers in the Labour Courts/Industrial Courts and Tribunals in the State of Maharashtra.

17 This petition is therefore, partly allowed. Clause (3) of the impugned order shall stand modified and shall read as under:-

“ The First Party is directed to reinstate the Second Party in service with continuity of service w.e.f. 13.6.2011 and with consequential benefits from 10.1.2019, without back wages for the period 13.6.2011 till 16.10.2018, after which the back wages have been paid to the petitioner. “

18 Rule is made partly absolute in these terms.

(RAVINDRA V. GHUGE, J)