

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.1622/2018

(Aminkhan s/o Salam Khan Vs. Divisional Controller)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Shri V.R.Deshpande, Advocate for the petitioner.
Shri V.G.Wankhede, Advocate for the respondent.

CORAM : Manish Pitale, J.
DATED : APRIL 26, 2019.

By this Writ Petition, the petitioner, who was working as Driver with the respondent - Corporation has challenged the judgment and order dated 18.10.2012 passed by the Industrial Court, Akola Bench, whereby Revision Application filed by the respondent - Corporation has been allowed and relief of reinstatement with continuity of service granted in favour of the petitioner has been set aside.

The petitioner who was working as driver since the year 1984 was dismissed from service on 29.12.1990. The allegation against the petitioner was that he had threatened his superior i.e. one Traffic Controller of the respondent - Corporation. Upon completion of inquiry proceedings, the service of the petitioner stood terminated.

Aggrieved by the same, the petitioner filed Complaint before the Labour Court under Section 28 of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971. By judgment and order dated 18.02.2003, the Labour Court found that the inquiry conducted against the petitioner was fair and proper but, it was found that the findings rendered by the Enquiry Officer were perverse and the punishment was shockingly disproportionate. The Labour Court found that the Enquiry Officer had erred in rendering findings against the petitioner because the witnesses produced in support of the charges levelled against the petitioner, did not support the case of the respondent - Corporation at all. On this basis, the complaint was allowed and the relief of reinstatement with continuity of service was granted to the petitioner, while the relief of back wages was not granted. This order of Labour Court was passed on 18.02.2003, which was made subject matter of challenge by the respondent - Corporation by filing Revision Application before the Industrial Court on 16.04.2003. It is relevant that during the pendency of said Revision Application, in the year 2005, the petitioner attained the age of superannuation.

Thereafter, by the impugned judgment and order dated 18.10.2012, the Industrial Court allowed the Revision Application of the respondent - Corporation and set aside the order of the Labour Court. The present Writ Petition is filed challenging the said order of the Industrial Court.

It was pointed out on behalf of the petitioner that two grounds on which the Revision Application

stood allowed were wholly unsustainable. It was pointed out that the first ground on which the Industrial Court relied was that the witnesses produced in support of the charges levelled against the petitioner had deposed in support of the charges and that their evidence was sufficient to prove the charges against the petitioner and secondly, that the petitioner had also been found guilty in criminal proceedings initiated for the same incident for which the departmental proceedings were initiated against him. It was pointed that both these grounds were not sustainable and that they were against the material on record.

Insofar as the judgment of the Criminal Case is concerned, it was pointed out that in fact the petitioner has been acquitted in the same, while some other employee of the respondent - Corporation concerning completely different incident had been found guilty. Therefore, it was contended that this ground was wholly unsustainable.

Insofar as the evidence of witnesses in the inquiry proceedings was concerned, it was pointed out that they had not supported the case of the respondent - Corporation at all and this was correctly appreciated at the first instance by the Labour Court while granting the relief to the petitioner.

The learned counsel appearing for the respondent - Corporation could not point out as to how the findings rendered by the Industrial Court could be

supported. Perusal of the material on record shows that the findings of the Industrial Court are indeed wholly unsustainable and not supported by the material on record. It is clear that the Industrial Court erred in holding that the petitioner had been convicted of criminal charge for the incident in question and that the witnesses who appeared before the Enquiry Officer had supported the case against the petitioner. In fact, the material on record shows exact to the contrary and, therefore, it is clear that the impugned judgment and order of the Industrial Court is unsustainable.

Although, the impugned judgment and order deserves to be set aside, the question that arises for consideration is regarding the nature of the relief that can now be granted to the petitioner, who admittedly attained the age of superannuation in the year 2005 itself. Therefore, while allowing the present writ petition and setting aside the impugned judgment and order of the Industrial Court, it is directed that instead of reinstatement in service, the petitioner shall be treated as having superannuated from service in the year 2005 so that the consequential reliefs of pension, gratuity and other retiral benefits can be granted to the petitioner. Since the Labour Court itself had not granted the relief of back wages, there is no question of giving any back wages to the petitioner.

In view of above, the Writ Petition is disposed of in the following terms:

- a. The impugned judgment and order passed by the Industrial Court is quashed and set aside.
- b. The petitioner is directed to be treated as having been in service and having superannuated in the year 2005.
- c. The respondent - Corporation shall take necessary steps for processing the case of the petitioner for grant of pension, gratuity and other retiral benefits, as per his entitlement.
- d. The respondent - Corporation shall start paying regular pension to the petitioner from June 2019 onwards.
- e. The respondent - Corporation shall pay amount towards arrears of pension, gratuity and other retiral benefits within a period of six months from today.
- f. It is made clear that the respondent - Corporation shall take into consideration the specific direction of continuity in service granted in favour of the petitioner by the Labour Court while calculating the financial benefits as indicated above.

JUDGE

ambulkar