

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

Writ Petition No.7882 of 2018

Nagpur Zilla Shetkari Sut Girni
Vs.
Netaji Khandale and others.

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

Court's or Judge's orders

Mr.V.D.Raut, Advocate for petitioner.
Mr.J.L. Bhoot, Advocate for respondent No.1.

CORAM : MANISH PITALE, J.

DATED : APRIL 24, 2019

Since the respondent No.1 has filed caveat, there is no necessity to issue notice. Respondent No.2, being the Industrial Court is only a formal party and service of notice on the said respondent is dispensed with.

2. The petitioner has challenged concurrent orders passed by the Labour Court and the Industrial Court in favour of the respondent No.1 granting relief of reinstatement with continuity of service and full back wages, upon setting aside order of termination of service passed by the petitioner against respondent No.1.

3. Respondent No.1 was appointed on the post of Jobber with the petitioner in the year 1984. In the year 1999, respondent No.1 suffered accident, due to

which his legs were injured and he underwent medical treatment, till 14/09/2001. As a result of injuries suffered by him, respondent No.1 suffered 40% permanent disability. It has come on record that after his health improved, respondent No.1 submitted representations to the petitioner for being joined back on duty. But, the communications sent by the petitioner on record show that the petitioner stated that with 40% permanent disability respondent No.1 could not be joined back on duty on the post of Jobber. In this situation, the respondent No.1 was constrained to file the complaint before the Industrial Court seeking direction to the petitioner to permit him to join duty. But, in the said complaint, the petitioner produced a document showing that service of respondent No.1 stood terminated on 14/01/2002, due to his inability to join the duties on the post of Jobber. As a consequences, the Industrial Court disposed of the complaint as infructuous.

4. In this backdrop, respondent No.1 filed complaint before the Labour Court, challenging the said order of termination of service. In this complaint, respondent No.1 as well as petitioner placed on record the oral and documentary evidence in support of their respective contentions. The Labour Court took into consideration the material on record and by the Judgment and order dated 04/04/2009, partly allowed the complaint of respondent No.1 directing the

petitioner to reinstate the respondent No.1 with continuity of service on the post of Jobber and with full back wages from 16/05/2001.

5. Aggrieved by the said Judgment and order of the Labour Court, the petitioner filed revision application before the Industrial Court under Section 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. By the impugned Judgment and order, the Industrial Court dismissed the revision application, thereby confirming the Judgment and order of the Labour Court. It is an admitted position on record that during pendency of the revision application before the Industrial Court, since the stay of only payment of back wages was granted, on 25/10/2010, the petitioner reinstated the respondent No.1 on the post of Laboratory Boy. This was perhaps because the respondent No.1 could not have performed duties on the post of Jobber in view of disability suffered by him. It is also an admitted position that the respondent No.1 has continued to work on the said post of Laboratory Boy, till date.

6. Aggrieved by the aforesaid Judgment and orders passed by the Labour Court and the Industrial Court, it is contended on behalf of the petitioner that the order of reinstatement with continuity of service on the post of Jobber and full back wages, could not have

been passed in favour of the respondent No.1 because he was insisting upon joining on the post of Jobber after having recovered from the injuries suffered in the accident. It was submitted that with 40% permanent disability, respondent No.1 could not have been joined back in duty on the post of Jobber and due to insistence of respondent No.1 to do so, as also the fact that he remained absent on the duty for long period, the petitioner had no other option but to terminate the service of respondent No.1.

7. As opposed to this, it is submitted on behalf of respondent No.1 that the documents on record do not show any such insistence on the part of respondent No.1 to join back on the duty only on the post of Jobber. According to respondent No.1, the petitioner failed to join back the respondent No.1 on duty on any post, despite repeated representations made in that regard. It is submitted that in this backdrop, it could not be said that the respondent No.1 had remained absent from duty and that his service was liable to be terminated on that ground. A perusal of the material placed on record shows that the respondent No.1 had indeed sent repeated representations to the petitioners for joining back on the duty after having recovered from the injuries suffered in the accident. The nature of communications on record show that respondent No.1 was concerned about joining back on duty and earning his bread. But, the letters sent by the

petitioner in response to the representations made by respondent No.1 show that the petitioner was insisting upon the respondent No.1 to prove that he was physically fit to perform the duty of Jobber despite of having suffered 40% permanent disability. In fact, the order of termination of service dated 14/01/2002, clearly states that since the respondent No.1 had become completely incapable of performing duty of Jobber his service was terminated.

8. Therefore, the material on record does not support the contentions raised on behalf of the petitioner before this Court that it was the respondent No.1 who was to blame for termination of his service because of his insistence on joining back on the post of Jobber. In that light, it becomes clear that the reasoning adopted by the Industrial Court and Labour Court could not be said to be faulty. At the same time, it has come on record that during pendency of the revision application before the Industrial Court, on 25/10/2010, the respondent no.1 was indeed joined back on duty on the post of Laboratory Boy. It appears that the duty of the said post of Laboratory Boy is being performed successfully by the respondent No.1 despite suffering 40% permanent disability. In this backdrop, as also the fact that there is nothing on record to show that the respondent No.1 was insisting upon joining back on duty only on the post of Jobber, it can be said that the direction given in Clause 3 of the

Judgment and order dated 04/04/2009, passed by the Labour Court that the petitioner shall reinstate respondent No.1 on the post of Jobber needs to be modified. To that extent, the writ petition in the present case can be allowed and suitable modification can be made in the order passed by the Labour Court, which was confirmed by the Industrial Court. Consequentially, the direction of payment of full back wages from 16/05/2001 will have to be read as direction of full back wages till 25/10/2010 when the respondent No.1 joined back on duty on the post of Laboratory Boy and further that back wages for the said period would be for the post of Laboratory Boy.

8. Accordingly writ petition is partly allowed in the following terms :

(a) The impugned Judgment and order of the Labour Court dated 04/04/2009 as confirmed by the Industrial Court by the impugned order dated 28/02/2017 is modified to the extent that the direction of reinstatement as granted by the Labour Court shall be reinstatement on the post of the Laboratory Boy.

(b) The respondent No.1 shall be granted to continuity of service and full back wages from 16/05/2001 to 25/10/2010 for the post of Laboratory Boy.

(c) Other directions granted by the Courts below

stand confirmed.

(d) The petitioner shall pay the said full back wages for the aforesaid period for the post of Laboratory Boy to the respondent No.1, within a period of three months from today.

JUDGE

MP Deshpande