

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

WRIT PETITION NO.2793/2017

Deepak Sitaram Baksare,
 aged 48, Occu. R/o C/o Urvashi Valde
 Near Plot No.552, Nagarjun Colony,
 in front of Sugat Nagar, Jaripatka, Nara
 Road, Nagpur.

..Petitioner.

..Vs..

Chief Executive Officer,
 Municipal Council, Gandhi Chowk,
 Bhandara.

..Respondent.

WRIT PETITION NO.2866/2017

Municipal Council, Bhandara,
 through its Chief Officer, Gandhi
 Chowk, Bhandara, Tah. and Distt.
 Bhandara.

..Petitioner.

..Vs..

Deepak S/o Sitaram Baksare,
 aged about Major, Occu. Nil,
 R/o Near Rohidas Putala, Gautam
 Buddha Ward, Mendha, Bhandara.

..Respondent.

 Shri D.P. Bhongade, Advocate for the petitioner.

Shri M.I. Dhatriak, Advocate for the respondent.

..in W.P.2793/2017.

Shri M.I. Dhatriak, Advocate for the petitioner.

Shri D.P. Bhongade, Advocate for the respondent.

..in W.P.2866/2017.

CORAM : Z.A. HAQ, J.

DATED : 20.6.2019.

C.A.W. NO.1043/2019 IN WRIT PETITION NO.2793/2017

1. As the Advocates representing the parties have shown willingness to argue the matter on merits, and considering the facts of the case, prayer for early hearing of petition is granted. The civil application is **allowed**

accordingly.

JUDGMENT IN WRIT PETITION NOS.2866/2017 AND 2793/2017

2. These two petitions are disposed by common judgment as they arise out of the same orders and are in respect of dispute between the same parties.

3. The complainant / employee had been working with the Health Department of Municipal Council / employer since 1986. The facts on record show that in 2001, the employee had fallen ill because of which he used to be on leave for two to three days. The employer had referred the employee to the Medical Board, Government Medical College, Nagpur on 21st September, 2001. The employee was examined by the Medical Board and was declared unfit for about 4 months. After 4 months, the employee had joined duties and had worked for about 8 months and had again fallen ill in September, 2002 and was not on duty till 1st July, 2004. According to the complainant, he had reported on duty on 2nd July, 2004 but he was informed that his services were terminated from 17th December, 2003.

4. The employee had approached the Labour Court by filing complaint under Section 28 read with Item I of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court had partly allowed the complaint filed by the employee and had directed the employer to reinstate the complainant with

continuity of service. The claim of the employee for back-wages was rejected by the Labour Court. The employer had filed revision before the Industrial Court challenging the order passed by the Labour Court directing the employer to reinstate the employee. The employee / complainant had also challenged the order passed by the Labour Court in revision before Industrial Court insofar as his claim for back-wages was refused. Both the revisions are decided by the Industrial Court by the impugned order. In Writ Petition No.2866/2017, the Municipal Council / employee has challenged the orders passed by the subordinate Courts directing it to reinstate the employee. In Writ Petition No. 2793/2017, the employee has challenged the orders passed by the subordinate Courts, rejecting his claim for back-wages.

5. The complainant / employee has not produced any material on record to show that he had submitted leave application during the period of his absence from 1st April, 2002 till 1st July, 2002. According to the employer / Municipal Council, the complainant was asked to remain present before the Medical Board / District Civil Surgeon, Bhandara for medical examination and letters to that effect were sent to District Civil Surgeon, Bhandara on 3rd February, 2003 and 7th April, 2003 but the complainant had not presented himself before the Medical Board for medical examination and the Medical Board had sent its report accordingly. A letter dated 24th September, 2003 was sent by the employer to the complainant calling upon him to produce medical

certificate of the Medical Board within 7 days and complainant was warned that violation on his part may result in strict action against him. According to the employer, the complainant was not found at his address and, therefore, the notice was affixed on the door of his house in presence of witnesses. According to the employer, a query was made from police station, Bhandara about pendency of any criminal case against the complainant. The employer / Municipal Council pleaded before the Labour Court that as whereabouts of complainant were not known, the employer had published a notice in daily Dainik Bhaskar dated 27th November, 2003 calling upon the complainant to join his duties within 7 days. In this public notice, the employer had warned the complainant that if he failed to join duties within 7 days, his services would be terminated. The complainant failed to join duty and, therefore, the Municipal Council passed resolution on 17th December, 2003 and terminated the services of the complainant. One of the contention of the employer / Municipal Council is that the complaint under Section 28 of the Act of 1971 was filed after 90 days of accruing of the cause of action and the complainant had not filed any application praying for condonation of delay and, therefore, the complaint was not maintainable.

5. The complainant has not controverted the factual position.
6. The subordinate Courts have granted relief to the complainant, and

has directed the employer to reinstate him, accepting the submission that the termination of his services is effected without making any enquiry. Though the services of an employee, who had been in service for more than 15 years, could not have been terminated by the Municipal Council without conducting the enquiry, in the facts of the present case, I find that the complainant created a situation because of which it became impossible for the Municipal Council to conduct enquiry. The subordinate Courts have misdirected themselves by giving undue weightage to the contention of the employee that his services could not have been terminated without conducting enquiry. In my view, the subordinate Courts have committed an error by directing the employer / Municipal Council to reinstate the complainant. Hence, the impugned orders are required to be set aside and the complaint filed by the complainant / employee has to be dismissed.

Hence, the following order:

- (i) The impugned orders are set aside.
- (ii) The complaint filed by the complainant / employee is dismissed.
- (iii) Writ Petition No.2866/2017 is **allowed** accordingly.
- (iv) Writ Petition No.2793/2017 is **dismissed**.
- (v) In the circumstances, the parties to bear their own costs.

JUDGE