

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1087 OF 2005

Kinetic Engineering Ltd.
Ahmednagar Dond Road,
Ahmednagar.

..Petitioner

Versus

Madhukar Bapuraoji Dhumne
Age 40 years, Occ. Service
R/o Shahunagar, Kedgaon,
Tq. and Dist. Ahmednagar.

..Respondent

WITH
WRIT PETITION NO.1250 OF 2006

Kinetic Engineering Ltd.
Ahmednagar Dond Road,
Ahmednagar.

..Petitioner

Versus

Madhukar Bapuraoji Dhumane
Age 45 years, Occ. Service
R/o Kedgaon, Post Kedgaon,
Tq. and Dist. Ahmednagar.

..Respondent

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Advocate for Petitioner : Shri Bedre V.S.
Advocate for Respondent : Shri Shahane P.L.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 06, 2020
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ORAL JUDGMENT :-

1. In the first petition, the management has challenged the judgment and order dated 29.9.1997, by which, the Labour Court has

allowed Complaint (ULP) No.34 of 1991 and has granted reinstatement to the respondent and to pay Rs.7,000/- towards backwages. Both the litigants approached the Industrial Court in Revision (ULP) Nos. 89 of 1997 and 1 of 1998. By judgment dated 6.7.2004, impugned in this petition, both the revisions have been dismissed.

2. In the second petition, the petitioner / management, has challenged the judgment dated 6.12.2005, delivered by the Industrial Court, by which, Complaint (ULP) No. 365 of 1990, filed by the respondent / employee has been allowed and he is granted permanency from the date of the filing of the complaint.

3. On 12.8.2008, both these petitions were considered by this Court and by a detailed order, this Court recorded that the Company has completely stopped its manufacturing of mopeds and motorcycles from April 2006 and has incurred losses of 218.2 Crores. This Court, therefore, did not grant reinstatement to the respondent as an interim measure and directed the management to deposit Rs.3,00,000/-. The respondent / employee was permitted to withdraw Rs.3,00,000/- from this Court. There is no dispute that the amount was deposited and the respondent has withdrawn the entire amount in 2011.

4. I have considered the strenuous submissions of the learned Advocates for the respective sides. In identical set of facts, this Court has delivered judgments on 8.12.2016 in Writ Petition No.2162 of 1997, on 5.1.2017 in Writ Petition No.4215 of 1997 and 4216 of 1997 and on 6.7.2019 in Writ Petition No.653 of 2007, 3689 of 2009 and 4178 of 2009. In the judgment delivered on 6.7.2009, Shri Bedre, learned Advocate has represented the same petitioner / management and Shri Shahane, learned Advocate has represented the employees.

5. Considering the facts and circumstances in the cases decided and the two cases in hand which are almost similar and considering the earlier order dated 12.8.2008 delivered by this Court in those matters, I do not find it necessary to reproduce the entire pleadings of the parties in this judgment. Since these employees are similarly placed, I deem it appropriate to compare the three cases of identical employees, namely, Barku Zumbar Borude, Vilas Saja Shinde and Gangaram Pandurang Agarkar, with the present employee Madhukar Bapuraoji Dhumane.

6. Barku had worked intermittently for a period of 60 months over a period of 16 years and this Court granted him lump sum

compensation of Rs.3,50,000/-. Vilas and Gangaram had worked for about 40 to 48 months intermittently. All three were out of employment for 24 years. Vilas and Gangaram were, therefore, paid Rs. 3,00,000/- each. In the instant case, Madhukar worked for 5 months in between 18.2.1986 till 17.7.1986, for about six months in between 10.2.1987 to 9.8.1987, for about 6 months in between 3.7.1988 and 2.2.1989, for about 6 months in between 3.9.1989 and 2.3.1990 and for about 4 months in between 4.9.1990 and 18.1.1991. He is out of employment for 29 years and has worked for 27 months in 5 years. This Court has granted compensation to the above referred three employees as well as the other employees in the above referred judgments at the rate of Rs. 75000/- for 12 calendar months of working. Madhukar has worked for about 27 months, which is 2 years and 3 months. He would, therefore, be entitled for about Rs.1,80,000/- at the rate of Rs.75,000/- for 12 months salary.

7. However, as this Court had directed the management to deposit Rs.3,00,000/- with liberty to Madhukar to withdraw the said amount, he has already withdrawn Rs.3,00,000/- in 2011 with a solvent surety. Had the amount been kept by this Court in a nationalized bank, it would have multiplied atleast twice in the last 9 years. Since Madhukar had already withdrawn the said amount of Rs.3,00,000/- in 2011, and though he is entitled only to

Rs.1,80,000/-,I deem it appropriate to restrain the petitioner / management from seeking refund of any amount in the peculiar facts of this case.

8. In view of the above, both these petitions are partly allowed. The impugned judgments stand modified and the employee Madhukar shall be entitled to the amount of Rs.3,00,000/- which he has already withdrawn.

9. Rule is made partly absolute accordingly.

10. The learned Registrar (Administration / Judicial) of this Court shall forthwith release respondent - Madhukar Bapuraoji Dhumane from the solvent surety, which he has tendered in this Court pursuant to the order dated 12.8.2008.

(RAVINDRA V. GHUGE, J.)

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