

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2993 OF 2020

The Manager,
Group Four Security Services India Pvt.Ltd.,
Plot No.49, Jai Vishwabharati Colony,
Near Roplekar Hospital,
Aurangabad

-- PETITIONER

VERSUS

Vice President,
Aurangabad Mazdoor Union,
CITU Bhavan, Shivaji High School road,
Ajabnagar, Aurangabad

-- RESPONDENT

Mr.S.V.Dankh, Advocate for the petitioner.
Mr.G.S.Telangare, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/03/2020

ORAL JUDGMENT :

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

2. The petitioner Security Agency is aggrieved by the judgment and award dated 27/08/2018 delivered by the Labour Court, Aurangabad in Ref.(IDA) No.10/2012 vide which the following order was passed :-

“1. The Reference is answered partly in affirmative.

2. Members of Second party union i.e. Arvind Dayanand Kharat and Ashok Shyamrao Hire are entitled for reinstatement in service with continuity along with 50% back wages from the date of oral termination i.e. 01.06.2010 till their reinstatement in service.

3. No order as to costs.

4. The copy of the Award be sent to the Dy.Commissioner of Labour, Aurangabad for publication and necessary action as per rules.”

3. The contention of the petitioner can be summarized as under :-

[a] The petitioner provides security personnel to various establishments as per it's contract.

[b] The employees represented by the respondent/Union, namely Arvind Dayanand Kharat and Ashok Shyamrao Hire, were Security Inspectors.

[c] They claimed to have joined the petitioner on 13/10/1997 and 28/02/2003, respectively.

[d] They were disengaged by the petitioner/Management on 01/06/2010.

[e] Their last drawn wages were @ Rs.6,368/- per month.

[f] They raised an industrial dispute u/s 2(k) of the I.D.Act, 1947 on 16/12/2011 for challenging their termination.

[g] The industrial dispute was admitted in conciliation on 07/03/2012.

[h] As the employer did not remain present even for a single hearing before the Conciliation Officer, the failure report was submitted on 19/03/2012 and the matter was referred to the Labour Court.

[i] The Union preferred its statement of claim on 17/02/2014.

[j] The petitioner entered its written statement dated 25/07/2014.

[k] After the parties adduced oral and documentary evidence, the Labour Court delivered the impugned award on 27/08/2018.

[l] The petitioners specifically took a stand that none of these two employees have been terminated or disengaged by the Management and that they themselves have started remaining absent.

[m] Despite the above stand, both of them did not approach the Management for seeking deployment.

[n] It will have to be inferred that both of them were not interested in their employment and therefore they did not choose to report for duties.

[o] The Labour Court has wrongly awarded 50% back wages from the date of their oral termination.

[p] Even today, none of these 2 employees have reported for

duties.

[q] If they are not interested in employment, they cannot be granted any back wages.

4. The learned Advocate for the respondent / Union / employees submits as under :-

[a] The Management is merely creating a make-believe picture that they have not terminated the two employees.

[b] As the Management did not level any charges on the two permanent employees, no enquiry was conducted.

[c] However, the truth has surfaced through the written statement of the Management, in which it is strongly contended that the bad behaviour and attitude of these two employees would indicate that they are not interested in employment but only in the back wages.

[d] The Management alleged that both have committed misconducts, they are wrong doers and have acted illegally while they were on duty.

[e] Serious allegations have been made against them by a staff member, as mentioned in the written statement.

[f] The Management alleged that police complaints are lodged against them and both of them used to collect bribes from their colleagues with reference to deployment of duties.

[g] It was also alleged that Mr.Ashok Hire is unauthorizedly absent from 02/05/2010 and Mr.Arvind Kharat, from 01/05/2010.

[h] Though such charges are levelled in the written statement, no charge sheet has been served upon either of them.

[i] Once the termination is held to be bad in law, the Hon'ble Apex Court has laid down the Law that back wages have to be granted and the Labour Court has granted them only 50% back wages.

[j] On instructions, both convey that they are willing to accept 35% of back wages with reinstatement, provided the management does not further litigate with them.

[k] The two employees have the details of their visits to the premises of the petitioner Management for reporting for duties in between 31/05/2010 and 20/07/2010.

[l] Mr.Ashok Hire has addressed a personal letter to the petitioner dated 10/06/2010, which has been received on the same day.

[m] The above documents were not placed before the Labour court.

5. In view of the submissions of the litigating parties and the record available, the Labour Court concluded from the written statement filed by the petitioner that there are several allegations levelled against both these employees. Several misdeeds have been attributed to their conduct. It was alleged that both had also abused

the Officers of the Establishment in filthy and indecent language and that they have not reported for duties. It is obvious from this stand that the Management has terminated them.

6. The employees consistently state that they have frequently tried to report for duties. On the one hand, the Management has taken a stand that they are not terminated and on the other hand, the Management has levelled serious allegations against both the employees. The Management did not put forth an offer to these two employees, through their written statement so as to indicate that both these employees are at liberty to report for duties.

7. The Management contends that they had been granted exemption under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 and the Private Security Agencies (Regulation), Act 2005 and they could have conducted disciplinary proceedings.

8. I am of the view, after considering the peculiar facts of this case involving 'WORD AGAINST WORD', that the Management should have exercised its jurisdiction for initiating an enquiry in the charges of unauthorized absenteeism and other alleged misconducts, against

both the employees. The Management contends that both were remaining unauthorizedly absent and yet no enquiry has been initiated, which was permissible in view of the exemption granted to it u/s 23 of the 1981 Act. Merely by claiming that the workers are not reporting for duties or are remaining unauthorizedly absent, would not be enough when a Management is a silent spectator. It should have exercised the power vested in it by Law by initiating action against these two employees with regard to all allegations and unauthorized absenteeism. Per contra, the employees contend that they are in need of employment, had never abandoned their services and that it was the Management which was keeping them at bay.

9. Though the learned Advocate for the petitioner may appear to be right in contending that once the employer declares that there is no termination, the pending industrial dispute would no longer remain an industrial dispute so as to enable the Labour Court to cause adjudication over the terms of reference. However, in my view, mere statement that there is no termination would not be enough until the employer expressly makes an offer through the written statement or a *purshis*, volunteering to allot duties to such employees so as to convince the Labour Court that there was no termination and the Management has a bonafide offer of allotting work to such

employees. In the face of such an offer, if the employees do not report for duties, the Labour Court could have, on the one hand declared that there was no cause of action surviving and on the other hand, the principle of “NO WORK - NO WAGES” would have become applicable to such employees.

10. Notwithstanding the strenuous submissions of the learned Advocate for the petitioner, I do not find any such offer having been made by the management any time in the last 10 years. Even after the impugned award has been delivered on 27/08/2018, this petition is filed on 29/08/2019 and these two employees have still not been issued orders of reinstatement or deployment in a particular shift or in a particular work schedule with any Principal Employer.

11. Normally, in the face of such peculiar facts, the presumption is that the employees have been offering themselves for work as they are in need of employment and their jobs may be the only source of earning for the family. Pursuant to the impugned award, the respondent/Union served the petitioner with a representation dated 12/10/2018 calling upon the Management to implement the award. Even then, the Management has not implemented the award and has approached this Court after 10 months from the date of the

representation, by filing this petition on 21/08/2019.

12. The Labour Court has analysed the oral and documentary evidence adduced before it. Both the employees have supported their pleadings in the statement of claim. In their cross-examination, they have maintained their stand. In the cross examination by the Management, it was suggested to the employees that they have behaved arrogantly with their superiors and colleagues before proceeding for leave. This would indicate that the defence of the Management was that these workers have indulged in several acts amounting to misconducts and they were unwanted in employment.

13. In the oral evidence led by the Management, it was averred that both the employees were remaining absent unauthorizedly. Serious allegations were voiced against them. Police complaints lodged against them were referred to. A clear case of seriously blemished behaviour was tried to be made out, which proved that the stand of 'No Termination', was unbelievable. It is obvious that the Management has laid a heavy thrust on the charge of mis-behaviour, misconducts and indiscipline on the part of the two workers. After realizing that they could not have dispensed with the services of these two employees without conducting domestic enquiries, the

Management appears to have taken a stand before the Labour Court that it had never terminated these two employees, which was purely to extricate itself from a precarious situation. The Management could have volunteered to reinstate them subject to initiating disciplinary action. However, the Management did not choose to do so.

14. Considering the above factors, I find that the Labour Court has dealt with each of them and has also noted that the management intends to oust the jurisdiction of the Labour Court by taking conflicting stands on the one hand, that these two employees are remaining unauthorizedly absent and on the other hand, heavily relying upon the alleged misconducts allegedly committed by them. I, therefore, do not find that the directions issued by the Labour Court to the Management to reinstate the two employees in service with continuity, could be interfered with and could be branded as being a perverse and erroneous conclusion.

15 In so far as the grant of 50% back wages are concerned, the Hon'ble Apex Court has held in catena of judgments that an employer should not be rewarded by depriving the employee of the back wages when the act of the employer of terminating the employee

is proved to be illegal. The Hon'ble Apex Court has held in Sudarshan Rajpoot Vs. Uttar Pradesh State Road Transport Corporation [(2015) 2 SCC 317] that once the employee is held to be wrongfully terminated, his sufferings should be softened by granting back wages as the Court may find appropriate. In the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, [(2013) 10 SCC 324], the Hon'ble Apex Court has granted 100% back wages. In the matter of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], it was held that 50% back wages would be commensurate.

16. In the instant case, the learned Advocate for the employees has taken instructions from both of them present in the Court that if the Management renders a 'Quietus' to this litigation, they are willing to scale down the back wages to 35% by way of a compromise. However, the learned Advocate for the petitioner/Management submits on instructions from the Officer present in the Court, who has filed this petition, that there are no such instructions from the Management to accept the offer of the workers of reducing the back wages so as to put an end to the litigation.

17. In view of the above, I do not find that the Labour Court has

committed any error in granting 50% back wages to these 2 employees from 01/06/2010, without interest.

18. As such, this petition, being devoid of merit, is therefore dismissed. Rule is discharged.

(Ravindra V.Ghuge, J.)