

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

9. WRIT PETITION No. 307 /2020

Ashok Sahakari Sakhar Karkhana Limited,
Ashoknagar Tal. Shrirampur Dist. Ahmednagar
through its Manager (HR)

...Petitioner

VERSUS

Bapusaheb S/o Babasaheb Gore
age 41 years occupation nil
R/o Undirgaon Taluka Shrirampur Dist. Ahmednagar

...Respondent

Mr. V.N. Upadhye, Advocate for petitioner.
Mr. P.V. Barde, Advocate for respondent.

CORAM : ROHIT B. DEO, J.

DATE : 13th January, 2020

PER COURT:

1. Rule. Rule is made returnable forthwith. Heard finally by consent.
2. The petitioner—employer terminated the respondent-employee on the charge of being unauthorisedly absent for 15 days.
3. The dispute reached the Labour Court. The enquiry and the findings of the Enquiry Officer were held proper. However, on the premise that the punishment is shockingly disproportionate to the proved misconduct, the Labour Court directed the reinstatement

of the employee without back-wages. The employer and the employee both approached the Industrial Court in revision. While the revision preferred by the employer was dismissed, the revision preferred by the employee was allowed partly. The employer was directed to pay 50% back-wages to the reinstated employee.

4. The employer is in writ jurisdiction being aggrieved by the revisional order.

5. The learned Counsel for the petitioner/employer would submit that while holding the punishment disproportionate to the proved misconduct, the Industrial Court could not have straightway directed 50% back-wages. The learned Counsel would emphasis that if the punishment is found to be disproportionate, it was incumbent upon the Labour Court to have substituted or modified the punishment or to have left open for the employer to decide it.

6. I find considerable force in the submission of the learned Counsel for the petitioner-employer that some punishment ought to have been imposed as the Labour Court has come to the conclusion that the punishment of termination is disproportionate to the proved misconduct. However, rather than remitting the matter to the Labour Court or leaving it open to the employer to decide the punishment, in my view, interest of justice would be subserved if the order of payment of back-wages is modified and, instead of directing

the payment of 50% back-wages, the employer is directed to pay only 25% (twenty five per cent) of the back-wages to the employee, which would be sufficient punishment for misconduct of unauthorisedly absence from duty for 15 days.

7. It is clarified that the back-wages would be from the date of dismissal i.e. 10th January 2017 till the date of reinstatement i.e. the date of reinstatement order of the Labour Court i.e. 24-04-2018. Obviously from and onwards 24th April 2018, the employee is entitled to reinstatement, if not reinstated, for the full salary payable for the period for which the employee is not reinstated pursuant to the order of the Labour Court.

8. Rule is made absolute in afore-stated terms.

(ROHIT B. DEO)
JUDGE.

Madkar