

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5918 OF 2018

Administrative Officer/Disciplinary
Authority, Primary Education Board
Municipal Corporation, Kolhapur ... Petitioner

Versus

Shri Shirish Jaysingrao Shinde
R/o. S-1, Building No.52,
Mathura Apartment,
Ambai Tank, Kolhapur ... Respondent

ALONG WITH
WRIT PETITION NO.10236 OF 2018
(NOT ON BOARD)

Shri Shirish Jaysingrao Shinde
Male, Aged 41 years,
occu. Unemployed.
R/o. S-1, Building No.52,
Mathura Apartment,
Ambai Tank, Kolhapur-416 010 ... Petitioner

Versus

1. Administrative Officer/Disciplinary Authority, Primary Education Committee, Shivaji Market, Second Floor, Chamber lane, Kolhapur, (Erstwhile known a Administrative Officer, Primary School Board, Kolhapur

2. Commissioner, Kolhapur Municipal Corporation, Kolhapur	...	Respondent
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Mr. Bhushan Mandlik a/w Mr. S.S. Patwardhan for the Petitioner.

Ms. Gauri Jadhav a/w Mr. J.G. Gaikwad for the Respondent and for the Petitioner in Writ Petition No.10236 of 2018.

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CORAM : S.C. GUPTE, J.

DATE : 27 FEBRUARY 2020

P.C. :

. Heard learned Counsel for the parties. Writ Petition No.10236 of 2018, which is not on board, is taken on board, called out and heard by consent of parties.

2 This writ petition (Writ Petition No.5918 of 2018) challenges an order passed by the Labour Court at Kolhapur and a revisional order passed by the Industrial Court at Kolhapur from that order. These orders were passed on a complaint of unfair labour practice made by the Respondent herein. The complaint under was Section 28(1) read with Items 1(a), (b), (d), (e), (f) and (g) of Schedule IV of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act 1971 (“Act”).

3 The complainant was appointed by the Petitioner herein as a Junior Clerk. After rendering service for about six years, without any blemish, the Respondent was issued a charge-sheet and a domestic enquiry was held against him. The charge was of having accepted

gratification from a third party for admission in an educational institute run by the Petitioner. The Enquiry Officer held the complainant to be guilty of the charge and based on his report, the complainant was dismissed from service. The Labour Court, in the first instance, held in a Part-I enquiry arising out of the complaint that the enquiry was not fair or proper and conclusion of the Enquiry Officer was perverse. Evidence was thereupon led before the Court in support of the alleged misconduct. Whilst leading evidence, the original third party complainant, who had alleged acceptance of gratification on the part of the complainant herein, did not stand by his original complaint. He in fact was thereupon cross-examined by the Petitioner's Counsel as a hostile witness. Nothing, however, could be obtained from him in support of the Petitioner's case during such cross-examination. Accordingly, the Labour Court held the disciplinary action to be vitiated for want of any evidence and set aside the termination order and ordered reinstatement of the Respondent together with 100 per cent back wages. When the matter was carried by the Petitioner herein in revision, the Industrial Court reduced the order of back wages to 50 per cent of back wages, whilst maintaining the direction for reinstatement.

4 No infirmity can be found with the impugned orders of reinstatement as well as 50 per cent back wages. Once the enquiry is held to be not fair or proper and the conclusion of the Enquiry Officer perverse, and this order (Part-I) is not challenged in revision, it is for the employer to prove the misconduct alleged against

the delinquent employee before the court. As both courts below have noted, there was no evidence before them in support of the complainant-employee's misconduct. The charge itself was initiated and disciplinary enquiry ordered against the delinquent on the basis of a written complaint of a third party. That third party was examined before the Labour Court in support of the Petitioner's case of misconduct by the delinquent. In his examination, the third party did not accept what was allegedly stated by him in his original complaint. When he was cross-examined as a hostile witness, nothing could be brought out in his cross-examination in support of the alleged misconduct of the delinquent. The impugned orders, accordingly, cannot be faulted. They are consistent with the evidence on record. The courts below, whilst rendering concurrent findings of fact, have taken into account all relevant and germane materials and circumstances and not considered any irrelevant or non-germane material or circumstance. The orders cannot be termed either as perverse or impossible.

5 Accordingly, there is no merit in the challenge. Writ Petition No.5918 of 2018 is dismissed.

6 The companion petition (Writ Petition No.10236 of 2018) has been filed by the complainant employee challenging refusal on the part of the revisional court to grant him full back wages. As we have noted above, the Industrial Court has given only 50 per cent of back wages. The Industrial court, whilst passing the impugned order, has

observed that the trial court (Labour Court at Kolhapur) has not considered the fact that there was no evidence on the part of the complainant that he was jobless. Neither in the complaint nor in his evidence is there any assertion on the part of the complainant employee that he was not gainfully employed during the pendency of the complaint. Learned Counsel for the Petitioner-employee submits that there was no such case on behalf of the Respondent employer either. The law in this behalf is very clear. It is, firstly, for the employee challenging termination to assert that he was not gainfully employed after he was terminated from service. Once he makes that assertion in his pleadings and evidence, the burden of proving that he was in fact gainfully employed shifts to the employer. Since, at the very outset, the employee in this case did not make any assertion of want of gainful employment, the initial burden itself thus having not been discharged by him, there was no question of the employer leading evidence in support of his case of gainful employment on the part of the employee. No infirmity can be found accordingly with the impugned order of reduction of back wages from 100 per cent to 50 per cent.

7 There is, accordingly, no merit even in this challenge. Writ Petition No.10236 of 2018 is dismissed.

(S.C. GUPTE, J.)