

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.6247 OF 2019**

The Managing Director, Shri Sant Damaji
Sahakari Sakhar Karkhana Ltd. Mangalwedha, Solapur ...Petitioner

vs

Mahadev Sadashiv Kawale ...Respondent

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Mr. Suhas S. Inamdar, for the Petitioner.

Mr. Vishwanath Patil, i/b. Kewal Ahya, for the Respondent.

Mr. Mahadev S. Kawale, Petitioner present in Court.

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CORAM : S.C. GUPTE, J.

DATED: 26 FEBRUARY, 2020

P.C. :

. Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith with consent of Counsel.

2. This writ petition challenges an order passed by the Industrial Court at Solapur in revision.

3. The Petitioner herein is a co-operative sugar factory. The Respondent was working as Sentrifitter Grade A in its engineering department at the relevant time. Whilst the Respondent was entrusted with duties at sulphitation tank of the sugar factory, on or about 28 February 2006, whilst working for repairs of the starter of juice sulphitation tank, an accident occurred. The case of the Petitioner against the Respondent was this: Three workmen of the factory, who were working with the Respondent, had gone inside the sulphitation

tank for repairs; whilst they were so working inside the sulphitation tank, it was the duty of the Respondent to keep a watch and not allow sugarcane juice to be released into the tank. The Respondent failed in his duty and irresponsibly started the pump of hot sugarcane juice, which gushed inside the tank, causing injury to all three workmen, one of whom died whilst taking medical treatment. As a result of this irresponsible and negligent act on the part of the Respondent, a charge-sheet was issued to him. Pursuant to the charge-sheet, a departmental enquiry was conducted against him. The Respondent was found guilty of the charges by the Enquiry Officer. After serving him with a copy of the enquiry report and a show cause notice for disciplinary action and after hearing his explanation, the Respondent was dismissed from service by an order passed by the Petitioner sugar factory on 21 June 2007. The dismissal was challenged by the Respondent in a complaint of unfair labour practice filed before the Labour Court at Solapur. The Labour Court declared the enquiry conducted against the Respondent not to be fair or proper and findings recorded by the Enquiry Officer to be perverse. A revision preferred by the Petitioner sugar factory from that order was dismissed by the Industrial Court at Solapur. The Labour Court, thereafter, proceeded to hear the complaint for Part-II stage and permitted the parties to lead evidence. After evidence was so led, the Labour Court, after hearing both sides, by its order dated 6 July 2015, allowed the complaint and declared the dismissal order of 21 June 2007 as illegal, null and void and directed the Petitioner to reinstate the Respondent with continuity of service and 30% back wages from the date of dismissal. This order was challenged both by the Petitioner and the Respondent in revision before the Industrial Court at Solapur. The

Industrial Court, in its impugned order dated 16 July 2018, partly allowed the Respondent's revision revising back wages from 30% to 50% from the date of dismissal, i.e. from 21 June 2007, till the date of the judgment and pay full salary to the Respondent for the remaining period of his service along with increments, etc. The Industrial Court dismissed the revision application of the Petitioner. Being aggrieved by the order passed by the revisional court, this petition has been preferred by the Petitioner.

4. So far as the conclusion of unfair labour practice itself is concerned, both courts below have come to a concurrent finding of fact that the misconduct alleged by the Respondent was not proved. What has mainly weighed with the courts below and particularly, the Industrial Court in revision, was the fact that though the Respondent was supervising the work of the three workmen working inside the tank, there was no proof that the tap was opened by the Respondent so as to let hot sugarcane juice inside the tank. Indeed, there is no evidence by anyone that the Petitioner was responsible for starting the tap, which was the gravamen of the charge against him. So far as back wages are concerned, the Industrial Court, in revision, observed that whilst ordering 30% of back wages, the Labour Court had not given cogent reasons, which could be justified in law. The Industrial Court noted that, accordingly, it was of the view that an interference was called for. Considering that at the time of arguments, the Respondent herein had communicated to the court that he did not wish to join back the services of the Petitioner, as the relationship of employer and employee between the parties had become practically dead and instead monetary relief should be offered to him, the Industrial Court was of the view that whilst

it did not have jurisdiction to grant monetary relief in lieu of reinstatement, in the facts of the case, it could alter the order of back wages to arrive at a balanced judgment and also to avoid multiplicity of proceedings. The Industrial Court, accordingly, directed the Petitioner to pay 50% back wages instead of 30% as ordered by the Labour Court.

5. No infirmity can be found with either the approach or conclusion of the Industrial Court in this behalf. Neither the approach nor the conclusion could be termed as unreasonable or perverse. The Industrial Court has taken into account all relevant and germane circumstances and materials and has not applied its mind to any irrelevant or non-germane material or circumstance. This order is supported by some evidence on record. It cannot be described as an impossible view.

6. When it, however, comes to the operative part of the impugned order, the Industrial Court appears to have gone even beyond 50% back wages and actually ordered the Petitioner to pay the Respondent his full salary for the remaining period of his service along with increments and other legal dues. This clearly appears to be unwarranted and, in fact, if I may say so, contradictory with the rationale applied by the Industrial Court in the body of its order whilst increasing the back wages from 30% to 50%.. The Industrial Court, for increasing back wages, has taken into account the Respondent's own statement that he did not intend to join the services of the Petitioner, since, according to him, the employee- employer relationship was practically dead. Whilst making use of the statement and passing its order of increase in back wages on it, the Industrial Court nevertheless

appears to have proceeded to order the Petitioner to pay full salary for the remaining period of the Respondent's service. In the first place, it is not clear if the salary is meant to be paid subject to or post the Respondent's joining the services of the Petitioner. In either case, whether the Respondent joins the service or not, the order cannot be justified, since it contradicts with the rest of the order, which is based on the fact that the Respondent does not intend to join the services of the Petitioner. This part of the order, accordingly, deserves to be interfered with.

7. Accordingly, Rule is partly made absolute and the petition partly allowed by deleting the portion requiring payment of full salary for the remaining period of the Respondent's service along with increment till 21 August 2021 together with other legal dues in clause (ii) of the operative order. Rest of the order is sustained. The petition is disposed of accordingly.

(S.C. GUPTE, J.)

Smita
Gonsalves

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