

BDP-SPS

Bharat
D.
Pandit

Digitally signed
by Bharat D.
Pandit
Date: 2020.06.30
14:53:13 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8036 OF 2006
WITH
CIVIL APPLICATION NO. 1253 OF 2018
IN
WRIT PETITION NO.8036 OF 2006**

1. Ramphal Pardeshi Sharma,
Age 47.
2. Bhaurao Dongar Patil.
3. Madhav Ramchandra Vadnerkar.
4. Dharmaraj Pundlik Shinde.

All C/o S.T. Kumbhar, 20 Dev-Dathakrupa
Co-operative Housing Society, Ambad Shiv
Road, Nashik - 422 010.

..Petitioners/
Applicants.

V/s

1. M/s Carbon Everflow Ltd @ M/s Graphite
India Ltd., 88, MIDC, Satpur, Nasik – 7.
2. Shri K.W. Thakare,
Presiding Officer, Labour Court, Nashik.
3. C.A. Nathani,
Presiding Officer, Labour Court,
Nashik.

....Respondents/
Non-applicants.

WITH
WRIT PETITION NO.8040 OF 2006
WITH
CIVIL APPLICATION NO.1254 OF 2018
IN
WRIT PETITION NO.8040 OF 2006

1. Shashikant Dinkar Jadhav,
Age 45.
2. Prakash Saidu Gagare,
3. Vinod Shridhar Joshi,
4. Vithal Sangram Wakale,
5. Mohamad Chand Ansari,
6. Ramkewal Malhhah,
7. Nemulal Malah,
8. Jagdish Nikantha Punje,

All C/o S.T. Kumbhar, 20 Dev-Dathakrupa
Co-operative Housing Society, Ambad Shiv
Road, Nashik - 422 010.

..Petitioners/
Applicants.

V/s

1. M/s Carbon Everflow Ltd @ M/s Graphite
India Ltd., 88, MIDC, Satpur, Nashik – 7.
2. Shri K.W. Thakare,
Presiding Officer, Labour Court, Nashik.
3. C.A. Nathani,

Presiding Officer, Labour Court,
Nashik.

....Respondents/
Non-applicants.

**WITH
WRIT PETITION NO.8039 OF 2006**

Eknath Anandrao Shekade,
Age 49, Ganesh Apartment, Vastu Nagar,
Ashok Nagar, Satpur, Nasik -7.

.... Petitioner

V/s

1. M/s Carbon Everflow Ltd @ M/s Graphite India Ltd., 88, MIDC, Satpur, Nasik – 7.
2. Shri K.W. Thakare,
Presiding Officer, Labour Court, Nashik.
3. C.A. Nathani,
Presiding Officer, Labour Court,
Nashik.

...Respondents

**WITH
WRIT PETITION NO.8157 OF 2005**

1. Shivaji Tukaram Kumbhar
- 1A. Anjali Shivaji Kumbhar,
Flat No.20, Devdalkrupa Coop. Hsg.
Society, Uttamanagar, Ambad Link Road,
Nasik.
- 1B. Suhas Shivaji Kumbhar,
Flat No.20, Devdalkrupa Coop. Hsg.
Society, Uttamanagar, Ambad Link Road,
Nasik.
- 1C. Aparna Shivaji Kumbhar,

..(since dead)

Flat No.20, Devdalkrupa Coop. Hsg.
Society, Uttamanagar, Ambad Link Road,
Nasik.

....Petitioners

V/s

1. M/s Carbon Everflow Ltd @ M/s Graphite India Ltd, 88, MIDC, Satpur, Nasiki-7.
2. Shri K.W. Thakare,
Presiding Officer, Labour Court, Nashik.
3. C.A. Nathani,
Presiding Officer, Labour Court,
Nashik.
4. P.S. Shinde, Member, Industrial Court,
Nashik.

(Respondent Nos.2 to 4
are deleted vide Court
order dated 28/3/2006).
....Respondents

Mr. Sanjeev Kumar Bapu Deore a/w Ms. Suchita Pawar i/by Mr. Adityaraj T. Gaikwad for the Petitioner(s) in WP Nos. 8036/2006, 8039/2006 and 8040/2006.

Mr. Nikhil Patil i/by Mr. Prabhakar Jadhav for the Petitioner(s) in WP No.8157/2005.

Ms. Leena Patil for Respondent No.1 in all Writ Petitions.

CORAM: NITIN W. SAMBRE, J.

Judgment reserved on : 26th July, 2019

Judgment pronounced on : 30th June, 2020.

JUDGMENT:

- 1] All these Writ Petitions can be conveniently disposed of by this

common judgment since the facts and issues involved therein are almost identical. Civil applications are not on board. The same are taken on board.

2] As far as Writ Petition No.8040 of 2006 is concerned, the Petitioners are claiming to be employees of Respondent No.1-Company and by way of present Petition have sought issuance of writ of certiorari or any other appropriate writ, order or direction for questioning the Award dated 19-11-2003 and final Award dated 22-12-2005 passed by the Labour Court, Nashik and have sought quashing of the same also in References (IDA) No. 1, 4, 7, 10, 19, 31, 43, 44 of 2001. As far as the challenge to the order dated 19-11-2003 is concerned, the employees have questioned the legality of the finding recorded by the Labour Court wherein it is declared that the inquiry held against the Petitioners was fair, proper and strictly in accordance with the principles of natural justice and as such, the preliminary issue raised by the Petitioners-employees was answered against them. Vide order dated 22.12.2005 the Labour Court though has held that termination of petitioners is not justifiable, however, instead of reinstatement ordered payment of compensation.

3] In the said Petition, Petitioners have moved Civil Application No.1254 of 2018 for early hearing and since all these Petitions are finally heard and disposed of, the said Civil Application has been rendered infructuous and is disposed of accordingly.

4] As far as Writ Petition No.8036 of 2006 is concerned, in the said Petition which is preferred by the employees, the Petitioners have raised an identical challenge as is referred to hereinabove. In the said Petition, Civil Application No.1253 of 2018 is for fixing the date of final hearing of the Petition and the said application, in view of conclusion on final hearing of the Petition, is disposed of as infructuous.

5] In Writ Petition No.8039 of 2006, the Petitioner to the Petition, who is an employee like the other Petitioners, has raised similar challenge as that of in earlier two Petitions.

6] In Writ Petition No. 8157 of 2005, the Petitioner-employee alleged to have expired and as a consequence whereof his legal heirs were brought on record and the claim for grant of relief is persuaded

by the legal heirs. In this Petition, the Petitioners have questioned the order dated 10-10-2003 and 22-12-2004 passed in ULP Proceedings 174, 175, 181 of 1997 and Review ULP Petition Nos. 4, 5, 6 of 2005. The order which is questioned in the present Petition i.e. order dated 10-10-2003 is passed by the Labour Court, declaring the inquiry held against the deceased-employee as fair and proper and vide subsequent order dated 22-12-2004, the Labour Court has held that the Respondent-employer has engaged in unfair labour practice whereby the services of the deceased employee were terminated and further directed to pay compensation of Rs 1,50,000/- in lieu of reinstatement and back-wages.

7] In the said Petition, Revision ULP 456 of 2005 preferred before the Industrial Court by the deceased employee came to be dismissed by the Industrial Court, which order is subject matter of challenge in the Petition.

8] As far as earlier three Petitions are concerned, the Labour Court though has declared termination of the Petitioners/workmen as unjustified in law and set aside the same, however, considering the

strained relationship between the Petitioners and Respondent-employer declared entitlement of compensation in lieu of reinstatement @ 3.33 years i.e. 40 months on the basis of last wages drawn.

9] The sum and substance of the contentions raised while questioning all these impugned orders by the respective learned Counsel for the Petitioners is that of the illegality and material irregularity committed by the Labour Court and the Industrial Court in recording a finding that the inquiry held against the Petitioners was legal and fair. It is also claimed by the learned Counsel for the respective Petitioners that once the Labour Court held that the termination of the Petitioners-employees is illegal and unjustified, the normal rule should have been that of reinstatement with complete back-wages and not the substitution of the relief of that of payment of compensation.

10] The respective learned Counsel for the parties were heard at length. The respective learned Counsel have tendered their written notes of arguments alongwith some case laws, so as to establish their own case of reinstatement with full back-wages.

11] From the record, it appears that on earlier occasion, attempts were made by this Court to settle the matter between the parties by increasing the amount of the compensation to be paid to the Petitioners. However, it appears that same has not been materialised.

12] This Court also before and after the hearing of the matter has requested the parties to reach to certain settlement, particularly in the background of the fact that the litigation is being agitated by the respective parties since 1998 that is almost for more than 22 years. The Petitioners-employees through their respective Counsel have shown their bonafides by stating that they are willing to settle the matter provided they are adequately compensated. In response to the offer made by the Petitioners-employees through their respective Counsel, Ms. Leena Patil, learned Counsel for Respondent-employer, has prevailed upon the employer to come out with an higher offer than that was made on last two occasions. Finally an offer of Rs 15 lakhs towards the settlement was made to each of the employees from the employers side.

13] It will be worth to record here that some of the Petitioners are willing to accept the same, particularly the Petitioners in Writ Petition

No.8157 of 2005 and few employees in other Petitions who appeared in person before this Court. However, rest of the employees stickup to their demand of payment of compensation at much higher rate or else have prayed for the relief of reinstatement with full back-wages. As such, this Court is constrained to consider rival submissions of the parties on merit.

14] Few facts as are necessary for deciding all these Petitions are as under:-

15] The Petitioners are claiming to be permanent employees of Respondent-Company who is engaged in the business of manufacturing of Graphite Electrode and Anode required for Steel Plant. It is claimed that there were around 250 employees working with the Respondent-Company and all of them were initially members of a recognized Union viz. Carbon Corporation Limited Kamgarsangh Union which was recognized under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as “MRTU & PULP Act”). The very same Union being a recognized Union, was authorized to enter into

settlement/agreement with the Respondent-Company from time to time.

16] According to the Petitioners, they have shifted their membership in view of unsatisfied conduct of the said Union alongwith other about 240 members and joined another Union by name Nasik Union in the month of February, 1996.

17] This conduct, according to Petitioners, of forming and joining another Union has invited the irk of Respondent-Company through its management and as such, Respondent-Company in collusion with the recognized Union, has started harassing and victimizing the Petitioners.

18] On 31-08-1998, the Petitioners gave a general strike call in which, according to them, 200 workmen participated. The Respondent-Company, having noticed that the call of strike given by individual workman of strike was illegal, as in presence of recognized Union, they were not authorized to give the call of strike, has approached the Industrial Court through ULP No.683 of 1998 challenging the said strike. Industrial Court declared the said strike illegal.

19] Having noticed the aforesaid serious misconduct of insubordination, reckless behaviour of the employees like the Petitioners, the Petitioners were served with charge-sheet on 20-08-1998 and another charge-sheet on 11-09-1998.

20] The Respondent-Company appointed an Inquiry Officer on 23-10-1998.

21] The Inquiry Officer, after the due inquiry and after offering opportunity of hearing, has submitted a report dated 16-01-1999 against the Petitioners and the Petitioners were held guilty of insubordination, indulging into illegal strike, abetting, inciting, instigating the illegal act and continuing the same, theft, fraud, dishonesty, riotous, disorderly and indecent behaviour, indisciplined conduct and willful damage to the work in process.

22] The services of the Petitioners came to be terminated on 06-12-1999.

23] The Petitioners as such, questioned the same before the Labour Court and the Labour Court declared that the inquiry conducted against the Petitioners was fair and proper, whereas on merits noticed that the termination was not justified. The Labour Court thereafter proceeded to observe that since the relations between the Petitioners and Respondent-employer were strained there was no point in granting reinstatement with back-wages and as such, it proceeded to award compensation based on the judgment of the Apex Court in the case of *O.P. Bhandari*.

24] In the aforesaid background, the respective learned Counsel for the Petitioners would urge that the Inquiry Officer during conduct of inquiry against the Petitioners, has wrongly conducted himself and held the Petitioners guilty under clause 24(a),(b), (d), (k) and (q). According to them, principles of natural justice were not followed. The respective learned Counsel for the Petitioners would urge that, on facts, the workers who participated in the strike were sitting beyond the road opposite to the main gate of the Company. According to them, if the evidence of witness of Respondent No.2 is appreciated, it can be inferred that this witness was not able to narrate the names of workers

and about nature of their misconduct. It is also claimed that the objection raised by the Petitioners before the Inquiry Officer to the additional charge-sheet dated 11-09-1998 was illegally rejected. The respective learned Counsel for the Petitioners would then urge that the fact that the Petitioners have resumed their work after the strike was over, ought to have been appreciated by the Inquiry Officer so also the management while proceeding against them. The learned Counsel for the Petitioners would urge that some of the workmen who were suspended and held guilty for participation in illegal strike in the very same inquiry were reinstated back into service by the Respondent-Company and as such, a discriminatory treatment is meted out to the Petitioners by the Respondent-employer. According to them, in the aforesaid backdrop, the learned Labour Court has committed an error of law by recording a perverse finding contrary to the pleadings and evidence on record.

25] By relying upon certain judgments of the Apex Court, particularly in the matter of *Manoj Shankarlal Salvi vs Special Steel Limited* reported in **2000 (87) FLR 1008**, the learned Counsel for the Petitioners would urge that the reinstatement can be denied only in

case where the industry has closed down and the Court can also deny relief of award of full back-wages where same would place impossible burden on the employer. However, according to them, ordinarily, the relief to be awarded must be that of reinstatement with full back-wages. They would further claim that the Labour Court has taken recourse to distorted process of reasoning so as to deny relief of reinstatement. The learned Counsel for the Petitioners would also rely on the judgment of the Apex Court in the matter of *O.P. Bhandari vs Indian Tourism Development Corporation Ltd. and Others* reported in (1986) 4 SCC 337, particularly paragraphs 6, 7, 8 and 10. The said judgment is also relied upon by the learned Counsel for the Respondent-employer so as to claim that there are circumstances which have rightly prompted the Labour Court not to grant reinstatement but payment of compensation.

26] The learned Counsel for Respondent-employer while opposing the aforesaid submissions would urge that it has been brought on record through the evidence of the Petitioners' witness that there was serious misconduct on the part of the Petitioners, particularly those who have given a call of strike without any authority of law and have

conducted themselves contrary to the statutory provisions that is the provisions under the MRTU and PULP Act. Ms. Patil would further urge that the Petitioners have shown complete disrespect and disregard to the rule of law by organizing illegal strike and also making the other employees participate in the same. According to her, the order of declaring the strike illegal still holds the field and the Petitioners could be held directly responsible for such an act of illegal strike which has resulted into huge financial and business loss to Respondent No.1 - Company. Ms. Patil would further urge that there is no discriminatory treatment meted out to the Petitioners, particularly in regard to those employees who were granted reinstatement in spite of the findings recorded by the Inquiry Officer against them. According to her, the case of such employees who were granted reinstatement cannot be at all considered at par with that of the case of Petitioners, particularly when such employees had tendered resignation and had also tendered apology which was not the case of the Petitioners.

27] Ms. Patil, learned Counsel for the Respondent-employer upon insistence of the Court and after taking instructions from the Respondent-employer has made a categorical statement that

Respondent-employer is ready and willing to offer compensation of Rs 15 lakhs to each of the Petitioners towards full and final settlement of their dues. She would further urge that the compensation as ordered by the Labour Court while passing the order impugned is already deposited and the Petitioners can take benefit of the said amount alongwith its interest. She would further urge that some of the Petitioners have stood retired/superannuated. As far as their termination is concerned, if the salary that was drawn by them on the date of their termination is considered, the amount of compensation offered by the Respondent-employer is more than sufficient and in any case more than the formula laid down by the Apex Court in the matter of *O.P. Bhandari* cited supra. As such, she has sought dismissal of the Petitions.

28] Considered rival submissions.

29] As far as the finding recorded by the learned Labour Court on the preliminary issue i.e. fairness of the inquiry is concerned, the learned Counsel for the Petitioners have failed to demonstrate any illegality or denial of any opportunity of hearing. Rather, from the

record it appears that in the inquiry itself, the Petitioners and the Respondents have agreed that they will not lead any evidence and the matter proceeded based on the pleadings and documentary evidence. Apart from above, if the finding recorded by the Labour Court on the preliminary issue of fairness of the inquiry is concerned, I hardly see any illegality or perversity in the said finding. Rather, the Labour Court in categorical terms has recorded finding that no violation of principles of natural justice could be noticed and such finding can be even endorsed by this Court as the Petitioners have unable to demonstrate any denial of opportunity of hearing.

30] This takes me to the subsequent submissions made by the learned Counsel for the Petitioners as regards their claim for reinstatement with full back-wages. No doubt, the management has not questioned the finding recorded by the Labour Court on the issue of termination of the Petitioners-workmen as unjustified.

31] The learned Counsel for the Petitioners have claimed that the Petitioners have willingly offered their services as could be inferred from their act of resuming services after the strike was called off.

According to them, there was no loss of confidence or it was not the case of the Respondent-employer that the Respondent-Company has closed down its operation.

32] If we appreciate the aforesaid contentions, what can be seen is, Petitioners and the Respondents are agitating their grievances based on the existing pleadings and evidence since 1996.

33] It appears that for almost last more than 22 years of the period of employment, Petitioners are not working with the Respondent-employer and some of them have already attained the age of superannuation or about to attain the same.

34] This Court cannot be oblivious to the fact that the Petitioners are party to the illegal strike and the declaration of such illegal strike is already made by the court of competent jurisdiction i.e. Industrial Court.

35] The Respondent-employer has given an opportunity to the employees to tender their resignation and enter the employment which

the Petitioners have failed to comply with. Rather, the other employees who were also held responsible under the very same domestic inquiry have chosen the path of tendering resignation and further apology and were re-employed.

36] In the aforesaid backdrop, if we consider the claim of the Petitioners that they are entitled for reinstatement on the point of discriminatory treatment, there is hardly any justifiable reason which warrants interference from this Court that too after a period of 22 years to order reinstatement with back-wages.

37] This Court is also required to take a note of the fact that the compensation in lieu of reinstatement as was awarded by the Labour Court was already deposited by the Respondent-employer and in view of the call given by this Court, the Respondent-employer has offered increased amount of compensation of Rs 15 lakhs to each of the employees.

38] The Apex Court in the matter of *Assistant Engineer, Rajasthan State Agricultural Marketing Board, Sub-Division, Kota vs. Mohan*

Lal reported in (2013) 14 SCC 543 had an occasion to deal with a similar situation like the present one. The Apex Court has considered the entire law as was existing while dealing with the similar situation and has observed that the Labour Court has to keep in view the factors including mode and manner of appointment of employees like the Petitioners and nature of employment, length of service, ground on which termination has been set aside and the delay in raising the Industrial Dispute.

39] In the matter of *O.P. Bhandari* cited supra, though the Apex Court has held that the reinstatement would be a rule and compensation in lieu thereof is a rare exception, however, the mitigating factors which perhaps has prevailed before the Labour Court in not passing an order of reinstatement with back-wages and in lieu of reinstatement has ordered the payment of compensation is also required to be appreciated in the case in hand, particularly when there is absence of cordial atmosphere between the Petitioners and Respondent-employer which would result in misery to the Petitioners to work with the Respondent-employer. This Court also cannot turn a blind eye to the very conduct of the Petitioners of indulging into an act

of illegal strike and thereby causing substantial financial and business loss to the Respondent-Company. Though participation in an illegal strike itself is not a misconduct, however, the consequences thereof cannot be overlooked. Apart from above, it can also be noticed that some of the employees have already attained an age of superannuation and some are already in queue as their superannuation is fast approaching. After having gone through the pleadings, attributions against the petitioners and the fact that the parties are litigating since last 22 years, it can be inferred that there are strained relations between the parties. In view of the above, there will be less than cordial atmosphere which will result in misery to the petitioners - workers. The petitioners, in such an eventuality, cannot improve their image of performance and the parties will be unhappy and miserable and as such, the order of award of compensation in lieu of the reinstatement and not the reinstatement, is very much justified. Reliance can be placed on the observations of the Supreme Court in paragraph No.8 in the matter of *O.P. Bhandari vs Indian Tourism Development Corporation Ltd. and Others* (supra).

40] The Labour Court then proceeded to consider the nature of

relation between the Petitioners and Respondent-employer, particularly of not having cordial atmosphere in carrying out the work and has observed that there are strained relations between the Petitioners and the Respondent-employer and the act of the Petitioners in stopping the production that too with an intention to form a new Union has resulted into a strained relation which is irreversible.

41] In the aforesaid backdrop, the approach of the Labour Court in awarding compensation in lieu of reinstatement is very much justified.

42] This Court is further required to appreciate that the Petitioners are claiming compensation based on their last drawn salary in the year 1998 which was around Rs 4000/-. Petitioners have submitted calculation before this Court, claiming wage rise and has sought compensation of around Rs 50 lakhs in case of each of the employees. The Petitioners have through their Counsel given an offer of one time compensation of Rs 40 lakhs which the Respondent No.1 - Company is not ready and willing to accept. Rather, Respondent-employer has come out with an offer of Rs 15 lakhs.

43] In my opinion, considering the claim made by the Petitioners and the offer made by the Respondent-employer and also the fact that the amount of compensation ordered by the Labour Court was already deposited which has added to it the accrued interest, it will be justifiable to award compensation of Rs 15 lakhs as is offered by the Respondent-employer in addition to amount which they have already deposited pursuant to the order made by the Labour Court. Let the amount of Rs 15 lakhs payable to each of the Petitioners be deposited in the Labour Court within a period of 90 days from today, failing which the said amount shall carry interest @ 9% per annum.

The Petitioners - employees will be entitled to withdraw the said amount once the appeal period is over.

44] With the above modification, in my opinion, no further interference is called for at the behest of the Petitioners in the Petitions. Petitions as such stand partly allowed to the above extent and are **disposed of**. Rule in the aforesaid Petitions is partly made absolute.

(NITIN W. SAMBRE, J.)