

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 7251 of 2016
Murlidhar Sarokar and Others Vs. APMC Jalgaon Jamod and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

None for the petitioner
Mr. Ved Deshpande, Advocate for the respondents No.1 and 2

CORAM : MANISH PITALE, J.

DATED : JANUARY 24, 2020

This writ petition was called out for hearing in the morning when none appeared on behalf of the petitioner. On the second call also in the afternoon session none has appeared on behalf of the petitioner. The learned counsel appearing for the respondents is present in Court for arguments.

2. This Court has perused the writ petition and the documents filed therewith and the learned counsel appearing for the respondents is heard. In the present case, the writ petition has been filed for agitating limited grievance of entitlement of the predecessor of the petitioners (hereinafter referred to as the workman) towards back wages. The workman was working on the post of Inspector with the respondent Agricultural Produce Market Committee. A departmental enquiry was initiated against him

pursuant to issuance of chargesheet and thereafter, the workman was dismissed from service. He challenged the said action of the said respondents before the Labour Court by initiating proceedings under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (M.R.T.U. & P.U.L.P. Act). The complaint filed by the said workman was allowed and he was granted relief of continuity of service, full back wages and all retirement benefits.

3. The said order of the Labour Court was challenged by the respondent before the Industrial Court by filing revision petition. The said revision petition was partly allowed by the Industrial Court. It was found that the workman had not been able to place relevant material or pleading or affidavit on record regarding his not being gainfully employed during pendency of the litigation and on this basis, only relief of back wages was set aside. As the workman had already attained the age of superannuation during pendency of proceedings before the Labour Court, there was no question of reinstatement, therefore, reliefs of continuity of service and retirement benefits were confirmed by the Industrial Court in the impugned order.

4. In the writ petition, it has been urged that relief of back wages granted by the Labour Court ought

not to have been set aside by the Industrial Court. It has been specifically claimed that since the respondents failed to show that the petitioner was gainfully employed during the intervening period, the workman could not have been deprived of the relief of back wages.

5. The contention sought to be raised on behalf of the petitioner is in the teeth of the settled position of law. It has been laid down in various judgments of the Hon'ble Supreme Court including in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (2013) 10 SCC 324**, that it is first for the workman / employee to state before the Court that during pendency of the litigation he or she was not in gainful employment. It is only after such statement is made that the burden will shift on the employer to place material on record that the workman was gainfully employed during pendency of the litigation.

6. In this context, the learned counsel for the respondents has invited attention of this Court to the reasoning given by the Industrial Court while depriving the workman of the relief of back wages. In paragraph No.29 of the impugned judgment and order, it has been held as follows :

“In the present complaint, the deceased complainant in the complaint has nowhere pleaded that after dismissal from the services,

he was not in gainful employment. The record shows that deceased complainant has not produced positive evidence on record to prove that he was not in gainful employment and thus, failed to discharge the burden upon him. In that case, in the absence of positive evidence, the deceased complainant cannot be entitled for the relief of back wages.”

7. Although the workman was not expected to produce positive evidence to show that he was not gainfully employed, because he could not be expected to prove the negative, since admittedly the workman did not make even single statement that he was not gainfully employed during pendency of litigation, no fault can be attributed to the impugned order.

8. In view of above, it is found that there is no merit in the present writ petition. Accordingly, the writ petition is dismissed.

JUDGE