

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

WRIT PETITION NO. 1231 OF 2013

Balasaheb Kondiba Barathe
Age 50 years, Occu. Labour,
R/o. Plot No.C, Bunglow No.13,
Ambika Nagar, Kedgaon Deviche,
Taluka and District Ahmednagar ... Petitioner

Versus

Kinetic Engineering Limited
Nagar-Aundha Road, Ahmednagar
Through its Vice President (Work) ... Respondent

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Mr. K. M. Nagarkar, Advocate for the petitioner
Mr. V. S. Bedre, Advocate for the respondent

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 05th MARCH, 2021

PRONOUNCED ON : 10th JUNE, 2021

ORDER :-

. The challenge in this writ petition is to the judgment and order dated 07.09.2012, passed by the Member, Industrial Court, Ahmednagar, in Revision Application (ULP) Nos. 36 and 38/2010.

2. The petitioner joined services with the respondent as 'Machine Operator', in July 1983. During lunch break on 14.07.1995, a cockroach was found in the food provided in the canteen of the respondent. There was, therefore, affray. The

respondent issued the petitioner show cause notice. Domestic enquiry was conducted against the petitioner, alleging to have been involved in the affray and other misconduct on the factory premises. The domestic enquiry went against the petitioner. He came to be terminated from service on 06.04.1997. The petitioner, therefore, filed Complaint (ULP) No.50 of 1997. The Labour Court, vide its judgment and order dated 27.08.2010, allowed the complaint, holding the respondent employer to have indulged in unfair labour practices in terms of Item 1(a),(b) and (g) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act, 1971). The termination of the petitioner was set aside. The respondent was directed to reinstate him in service, without back wages.

The petitioner by filing Revision Application (ULP) No.38 of 2010, challenged the order of the Labour Court before the Industrial Tribunal to the extent of refusing to grant him back wages. The respondent too, by filing Revision Application (ULP) No.36 of 2010, challenged the order of the Labour Court granting the petitioner relief of reinstatement. The Member, Industrial Court, Ahmednagar, vide his common judgment and order dated 07.09.2012, dismissed the revision application of the petitioner. It

allowed the revision application preferred by the respondent, dismissing the complaint filed by the petitioner. The petitioner is therefore before this Court.

3. Shri K. M. Nagarkar, learned Advocate for the petitioner would submit that until 1995, '*Sarva Shramik Sangh*' was the approved union at the factory of the respondent. The respondent, however, entered into service agreement with '*Bhartiya Kamgar Sena*'. The agreement was against the interest of the workers. The petitioner took part in the movement to start another union, namely 'Association of Engineering Workers'. The respondent did not want another union. With a view to ensure the petitioner's termination from service, domestic enquiry was initiated against the petitioner. The Labour Court rightly allowed the Complaint (ULP) No.50 of 1997 filed by the petitioner. The Labour Court, however, should have granted the petitioner relief of back wages. The impugned order passed by the Industrial Court is perverse. The learned Advocate would further submit that a worker, namely Shri Thube, who was alleged to have been involved in the affray, had not been subjected to a domestic enquiry. He has been continued in service with the respondent at the instance of the labour union, which finds favour

with the respondent. Similarly placed workman, namely, Gulabrao Pawar has been reinstated in service by virtue of order passed in judicial proceedings. The petitioner is, therefore, entitled for similar treatment. Learned Advocate has also urged for grant of full back wages on the ground that the respondent dealt the petitioner with discrimination. He could have been in service like one Shri Thube. The petitioner was not gainfully employed. The learned Advocate, ultimately, urged for allowing the writ petition.

4. Shri V. S. Bedre, learned Advocate for the respondent, would on the other hand, submit that the Industrial Court has rightly upset the order of the Labour Court. The Labour Court, without finding the punishment imposed on the petitioner, to be grossly disproportionate, passed the order of reinstatement. The labour Court cannot sit in appeal against the decision in domestic enquiry. At the most, the order of dismissal may be converted into discharge. The respondent was ready to offer the petitioner a sum of Rs.1,00,000/- (Rupees One Lakh) towards one time settlement. The learned Advocate brought to my notice the order passed by this Court on 08.08.2018, wherein it has been *prima-facie* observed that the petitioner did not have a case to succeed in the petition. The

learned Advocate also placed reliance on the judgment of this Court dated 31.08.2016, passed in Writ Petition No.5575 of 2016 (*Ambadas s/o Pandurang Gurav/Waghmare vs. Kinetic Engineering Ltd.*) and urged for dismissal of the writ petition.

5. The petitioner was serving as Machine Operator with the respondent. An affray took place on the factory premises of the respondent on 14.07.1995. A reason, therefor, was said to be a cockroach having been found in the food served to one of the workers in the canteen. The Labour Court, on appreciating the matter before it, found that the incident was the outcome of the natural reaction of the workers. In view of the Labour Court, the punishment of termination of service was disproportionate.

6. After having perused the judgment of the Labour Court, I find that the Member, Industrial Court, ought not to have interfered therewith. In my view, the reasons given by the Industrial Court to upset the order passed by the Labour Court are perverse. The Industrial Court observed, “when an enquiry is conducted by the employer against the delinquent employee question of victimization under no circumstances can arise, and therefore, question of attracting Item – 1(a) of Schedule IV will not survive. Same is the

case so far as Item – 1(b) is concerned, because when process of enquiry is followed by issuing charge-sheet, the action on the part of the employer under no circumstances can be termed as not in good faith or colourable exercise of employer's right. When the learned Judge, Labour Court has held the enquiry to be fair and proper and the findings as not perverse, question of discussing or scrutinizing the evidence recorded before the enquiry officer to draw some other conclusion amounts to travelling beyond the jurisdiction vested in it. When the learned Judge, Labour Court drawn the finding that the findings drawn by the enquiry officer are not perverse he has got very limited jurisdiction to interfere with the punishment and the question of interference comes or arises only when the punishment is held to be shockingly disproportionate. The Labour Court did not find the punishment imposed on the petitioner to be shockingly disproportionate.

7. The Labour Court had considered the fact that one Shri Thube, similarly placed workman, had not been subjected to domestic enquiry. He was continued in service on the intervention of the union, which found favour with the respondent. When the respondent allows one of the similarly placed workers to continue in

service, this fact itself disclosed that the misconduct attributed to the petitioner was not so serious so as to invoke punishment of dismissal from service. The petitioner has every reason to contend that he has been discriminated by the respondent. Moreover, one Gulabrao Pawar, similarly placed workman, was subjected to domestic inquiry for the very reason. The Labour Court ordered his reinstatement. The decision of the Labour Court has been confirmed by the Industrial Court in revision and then this Court in Writ Petition No.2378 of 2010 and Letters Patent Appeal, as well (L.PA.No.2 of 2014 - decided on 15.04.2014). The petitioner, thus, becomes entitled for similar treatment. The impugned order is therefore liable to be set aside.

8. On the question of grant of back wages, the Labour Court did not grant the petitioner, relief. It has been in the evidence of the petitioner that he was not gainfully employed. Post his dismissal from service to make both the ends meet, he did the job wherever and whenever he got it.

9. In my view, the petitioner deserves to be granted 50% of the back wages with all consequential benefits. The respondent gave the petitioner differential treatment. When the Labour Court has

directed his reinstatement, the respondent challenged the said order only with a view to buy time and see that the petitioner remains out of service.

10. True, the respondent may have a statutory right to challenge the order of the Labour Court. The facts and circumstances, however, indicate that the respondent wanted the petitioner to be out of its employment. The submission of the learned Advocate for the respondent that order of dismissal may be converted into discharge, the respondent is ready to pay the petitioner a sum of Rs.1,00,000/- (Rupees One Lakh) and something more, if so directed towards full and final settlement, cannot be accepted in the facts and circumstances of the case. The respondent would also not be benefited by placing reliance on the judgment in the case of *Ambadas* (supra). I have perused the said judgment to find quiet distinguishable on facts. The petitioner therein was found to be sleeping on duty in Heat Treatment Department. The punishment of dismissal from service could not be termed to be shockingly disproportionate. In the facts and circumstances of the said case, the dismissal of the petitioner therein was converted into an order of discharge.

11. For the reasons given herein above, the petition succeeds. The writ petition is allowed in terms of prayer clause [A]. The order passed by the Labour Court, is modified to the extent of refusal to grant back wages.

12. The respondent is directed to reinstate the petitioner in service, if he has not attained the age of superannuation, and pay him 50% back wages and all the consequential benefits from the date of the order passed by the Labour Court, Ahmednagar, in Complaint (ULP) No.50 of 1997.

[R. G. AVACHAT, J.]

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