

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

WRIT PETITION NO. 3187 OF 2017

- 1] Divisional Deputy Director,
Ground Water Survey and Development Agency,
Amravati Division, Amravati.
- 2] Senior Geologist, Ground Water,
Survey & Development Agency,
Amravati Division, Amravati.

..... **PETITIONERS**

...VERSUS...

- 1] Kishor S/o Madhukar Suryawanshi,
Aged about 32 years, R/o Dr. Ambedkar Road,
Frezarpura, Amravati.
- 2] Industrial Court, Amravati.
- 3] Labour Court, Amravati.

..... **RESPONDENTS**

Shri Indraneel J. Damle, A.G.P for the petitioners.
Shri N.R.Saboo, Advocate for Respondent No. 1.

CORAM : V. M. DESHPANDE, J.
DATE : JANUARY 27, 2021

ORAL JUDGMENT

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the parties.

2. The petitioners – Divisional Deputy Director, Ground Water Survey and Development Agency, Amravati Division, Amravati and Senior Geologist, Ground Water, Survey and Development Agency, Amravati Division, Amravati, are represented before this Court by learned Assistant Government Pleader Shri Indranil Damle. Respondent No.1 – Kishor Madhukar Suryawanshi is represented by learned counsel Shri N.R.Saboo. Presence of respondent Nos. 2 and 3 is not at all necessary, they being the Industrial Court and the Labour Court.

3. By this petition, the petitioners are challenging the judgment and order passed by the learned Judge, Labour Court, Amravati dated 25.02.2015 in Complaint (ULP) No. 01/1995 together with the judgment and order passed by the learned Member, Industrial Tribunal, Amravati in Revision (ULP) No. 24/2015, dated 01.07.2016.

4. By the judgment dated 25.02.2015, learned Judge of Labour Court, Amravati partly allowed the complaint filed on behalf of the respondent No.1 and declared that the petitioners herein have engaged in Unfair Labour Practice. By declaring so, the learned Judge set aside the termination of services of the

respondent no.1 dated 05.12.1994 and the petitioners herein were directed to reinstate the respondent No.1 with continuity of service with 50% back-wages for the period when he was out of employment. This judgment was confirmed by the learned Member, Industrial Tribunal in Revision proceedings filed on behalf of the petitioners herein. Hence, this petition.

5. Heard learned Assistant Government Pleader Shri Indraneel Damle for the petitioners and Shri N.R.Saboo, learned counsel for respondent no.1 in extenso. Both the learned counsel submitted with vehemence before this Court and prayed for respective reliefs for their brief.

6. It is not in dispute before this Court that prior to termination of services of the respondent No.1 on 05.12.1994, the respondent No.1 herein used to work as a Typist on daily wages since February-1989. The bone of contention before this Court on behalf of the petitioners is that in any preceding year the respondent-1 did not complete 240 days. Therefore, the Courts below erred in granting the order of reinstatement in favour of the respondent No.1.

7. It is to be noted here that after termination of the services, the respondent No.1 filed a complaint in the Labour Court. The said was contested by the petitioners herein. The learned Judge of the Labour Court dismissed the complaint, giving rise to the revision at the behest of the respondent No.1 before the Industrial Tribunal. The Industrial Tribunal also dismissed the complaint and the revision, resulting into filing of the writ petition before this Court i.e. Writ Petition No.4389/2010 by the respondent no.1. The writ petition was also dismissed. Therefore, the respondent No.1 herein filed Letters Patent Appeal No.11/2011, and on 28.09.2011, the Division Bench of this Court, in view of the authoritative pronouncement by the Hon'ble Apex Court in *Jairaj N. Shetti V/s Union of India* reported in **2005 III CLR 106** and the judgment of the Division Bench in L.P.A. No.103/2011, remanded back the matter to the Labour Court for fresh determination in accordance with law.

8. After remand, the parties appeared before the Labour Court. It was contended in the complaint that the petitioners herein are the "Industry" and without there being compliance of provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 the services of the respondent no.1 were terminated in

colourable exercise of employer's right. The petitioners in their written statement submitted that the said Department of the State is not an 'Industry'.

9. The learned Judge of the Labour Court allowed the parties to the complaint to amend their pleadings and also adduce the evidence. In view of the stand taken by the petitioner-Department, an additional issue was also framed as to whether the respondent-Department is an "Industry" or not. After considering the pleadings and evidence and in view of the law laid down by the Hon'ble Apex Court in ***Bangalore Water Supply and Sewerage Board V/s A. Rajappa***, reported in AIR 1978 SC 553 found that the petitioner-Department is an "Industry". The said finding was not touched before this Court or even before the learned Tribunal.

10. In view of the law laid down by the Hon'ble Apex Court in *Jairaj N. Shetti's* case (supra), an application was moved (Exhibit-11) by the respondent No.1 (original complainant), seeking direction against the petitioners herein for production of documents i.e. (1) Rig-muster (daily wages) maintained by Junior Engineer. (2) Recovery deposit list of the employees for 1991, (3) Cash book maintained by respondent No.2. Necessary orders

were passed by the learned Judge of the Labour Court on this application and in view of the order, the petitioners (respondents before the Labour Court) placed on record a copy of the Rig-muster from 11.3.1992 to 30.6.1994 and a copy of Recovery Register.

11. Since, the respondent No.1 was working from 1989, and though the prayer was for production of documents from 1989, the documents were filed only from 11.3.1992. Therefore, in my view the learned Judge of the Labour Court has rightly drawn adverse interference against the petitioners.

12. Insofar as years 1992 and 1993 are concerned, from the Rig-register record it was found by the learned Judge of the Labour Court that in the year 1992, the respondent No.1 has worked for 233 days, whereas in 1993 he worked for 237 days. The learned Judge of the Labour Court, in view of the law laid down by the Hon'ble Apex Court in *Workmen of American Express International Banking Corporation Vs Management of American Express International Banking Corporation*, reported in *AIR 1986 SC 458* rightly found that the Sundays should be taken into consideration while calculating the total number of working days.

The learned Judge has rightly observed that there are at least 48 Sundays in each year. Therefore, considering the fact that as per the Rig-muster, the petitioner has worked for 233 days in 1992 and 237 days in 1993 coupled with 48 days being Sunday, he has completed 240 days in the preceding year and therefore, since respondent no.1 has completed 240 days in the years 1992 and 1993, the law laid down by the Hon'ble Apex Court in *Jairaj N. Shetti's* case (supra) applies to this case with full force.

13. Admittedly, no notice was issued to the respondent no.1 before terminating his services. There is no dispute even before this Court during the course of the submissions that provisions of Sections 25-F and 25-G were followed by the Department. In that view of the matter, the learned Judge of the Labour Court was right in setting aside the termination order and directing the petitioner (respondent no.1 herein) to be reinstated.

14. The petitioners herein, thereafter filed a revision. During the pendency of the said revision, the respondent no.1 was reinstated in service. The judgment and order passed by the learned Industrial Tribunal is on the line of the the judgment of the learned Judge, Lower Court, Amravati.

15. There is no dispute before this Court that as on today, the respondent No.1 is working with the petitioner-Department. The petitioners are raising serious dispute regarding direction from the Labour Court to pay 50% back-wages. It was contended before me that the respondent No.1 filed an additional affidavit in-lieu of evidence on 05.09.2014 making a statement on oath that from 5.12.1994 he is not in gainful employment and sufficient work was available with the department. When the respondent No.1 was under the cross-examination of the petitioner-Department, the issue that the respondent was not in gainful employment was not even touched. The said aspect is also not disputed before me in this writ proceeding.

16. Thus, when the services of respondent no.1 were terminated without following due process of law and he was not in gainful employment from the date of termination till he was reinstated in service by the interim order, the respondent no.1 was entitled for full back-wages. However, the respondent no.1 did not challenge the verdict of the Labour Court giving 50% back-wages. Therefore, the issue of back-wages to the extent of 50% has attended its finality.

17. In view of the unassailable evidence brought on record that the respondent No.1 has completed 240 days in calendar year of 1992-1993 and his services were terminated without following due process of law and the petitioner-Department being an "Industry", in my view, the concurrent findings of facts recorded by both the Court's below need not be interfered with by this Court in its limited jurisdiction under Article 227 of the Constitution of India. Resultantly, I pass the following order :

ORDER

- a] The writ petition is dismissed.
- b] Since, only 25% amount of back-wages were deposited before the Court below, the petitioners are directed to pay remaining 25% of backwages to the respondent no.1 within a period of Sixteen weeks from today.
- c] Respondent no.1 is permitted to withdraw the 25% amount of backwages deposited by the petitioners before the Court below.
- d] Rule is discharged. No order as to costs.

JUDGE

Diwale

**Parag
Diwale**

Digitally signed
by Parag Diwale
Date:
2021.01.28
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