

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

WRIT PETITION NO. 3628 OF 2011

PETITIONER: State of Maharashtra, through
The Deputy Director of Health Services,
Akola Circle, Main Hospital, Akola.

...VERSUS...

RESPONDENT: Vivekanand Rajabhau Sapkal,
aged about 30 years, R/o. Bharti Nagar,
Near Balapur Naka, Tq. and Dist. Akola.

Ms. H. Jaipurkar, AGP for Petitioner.
None for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 22/02/2021.

1] Heard Ms. Jaipurkar, the learned AGP for the petitioner.
None present for the respondent when called.

2] The complainant was appointed as Junior Clerk on 11.2.1986, at District General Hospital, Amravati, where he continued to work till 12.02.1988, and on 13.02.1988 his services came to be terminated orally, as claimed by the complainant. According to the complainant, the nature of work and the employment of the petitioner was permanent. The said oral

termination was challenged before the Labour Court in the year 1992, by way of ULP No. 143/1992, in which by judgment dated 14.07.1998, the learned Labour Court held that the action of the petitioner in orally terminating the respondent amounted to retrenchment, which for the reasons as recorded therein quashed and set aside. A revision carried to the Industrial Court came to be dismissed on 20.11.2004.

3] This Court while issuing Rule on 05.12.2011, has kept the question of delay and latches open, in view of the fact that though the revision filed before the Industrial Court was dismissed on 20.11.2004, the present petition came to be filed on 06.05.2011, more than 6 years thereafter.

4] Though there is delay of 6 years and more in filing of the petition, however, considering the fact that the initial complaint itself was filed after more than 4 years of the termination, the matter is being considered on its merits.

5] With the help of learned AGP Ms. Jaipurkar, I have perused the impugned judgment passed by the learned Labour Court, as confirmed by the Industrial Court. It is material to note here that the judgment of the learned Labour Court directing to continue the complainant with continuity in services from the date of termination, according to the respondent, has been complied with as per the averment made in the submissions of the respondent dated 16.11.2011, where it is stated that since 1992 and even on the date of filing of the submissions, the complainant was in employment, which position is not controverted by the learned AGP. The order of reinstatement and continuity in service, therefore, has taken effect, and considering the position as arrived at in the judgment of the Labour Court, there is no reason to disturb the same, as the reasons recorded therein are logical, based upon the fact position stated therein.

6] The only issue which now remains is the question of award of back-wages by the learned Labour Court for the period from 13.02.1988 till 23.11.1992. As found by this Court in the order dated 05.12.2011 while admitting the petition and so also from the copy

of the complaint and the judgment of the learned Labour Court, there is no averment that the complainant was not gainfully employed during the above period. In my considered opinion, such a statement by the complainant was necessary in order to enable the learned Labour Court to grant back-wages for the above period. In the case of **G.M.Tank vrs. State of Gujrat and ors**, reported in 2006 (5) SCC 466 and in **Basanti Prasad vrs. Chairman, Bihar School Examination Board and others**, reported in 2009 (6) SCC 791, the Hon'ble Apex Court, has declined to grant back-wages, on the principle that since the employee has not rendered the work, he was not entitled to any back-wages. In W.P No. 263/2016 *M.S.R.T.C. vrs. Mohangir Shankargir Gosawi*, I have also taken a similar view, based upon the judgments in Basanti Prasad and G.M.Tank (*Supra*), in light of which the judgment of the Labour Court in so far as it relates to awarding of back-wages for the period 13.02.1988 till 23.11.1992 cannot be sustained.

7] The petition therefore is partly allowed. The judgment of the Labour Court directing to continue the complainant in services with continuity of service from the date of termination, as upheld by

the Industrial Court is maintained. The judgment of the Labour Court dated 14.7.1998, and that of Industrial Court upholding it, 3 to the extent it awards back-wages for the period from 13.02.1988 to 23.11.1992 is quashed and set aside.

8] Rule is accordingly made absolute in above terms. In the circumstances, there shall be no order as to costs.

JUDGE

Rvjalit