

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

WRIT PETITION NO. 4001/2017

Sahadeo s/o Maroti Jambhulkar .vs. Chief Engineer, Irrigatino Department,
Nagpur and anr.

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

Court's or Judge's orders.

Mrs. U. A. Patil, Advocate for respondents.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 25, 2021

Learned counsel for petitioner is absent.

Respondents are represented by Mrs. U. A. Patil,

Petitioner was engaged as Driver on daily wages in employment of Irrigation Department on CRTE with effect from 21.01.1981 and confirmed in service with effect from 21.01.1986.

The petitioner was dismissed with effect from 30.01.1991 vide order dated 29.01.1991. The dismissal was without issuing any show cause notice, charge-sheet or inquiry.

The petitioner filed complaint ULPA No. 451/1991, challenging his dismissal. The complaint was resisted by employer-present respondents. The authorities adduced evidence. After a full dress trial in Complaint ULPA No.451/1991, learned 3rd Labour Court, Nagpur on 13.10.2010 partly allowed the complaint thereby granting order of reinstatement, however, without back wages.

The order of reinstatement was accepted by the department. They did not challenge the said. However, the petitioner, who was aggrieved by denial of back-wages, approached to the Industrial Court by filing revision under

Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. The revision was registered as Revision ULPA No. 271/2011. The said revision is dismissed by the learned Member of the Tribunal on 13.07.2016. Hence, this writ petition.

From the record, it is clear that the petitioner at the time of filing of the complaint before the tribunal filed an affidavit on record and in that he mentioned his occupation as service.

Be that as it may, in view of the settled position of law, it is for the employee to plead and prove that after dismissal from service till his reinstatement by the Court of law, the employee was not gainfully employed anywhere and the initial burden rests on the shoulder of the employee. The said burden, of course, shifts on the shoulder of employer if initial burden about gainful employment is discharged by the employee. The learned revisional Court found that the learned Judge, Labour Court has rightly found that the petitioner did not discharge the initial burden that he was not gainfully employed anywhere.

In that view of the matter, orders passed by the learned Judge, Labour Court and learned Member, Industrial Tribunal denying the back wages warrant no interference. The writ petition is, therefore, rejected.

JUDGE