

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

WRIT PETITION NO.7546 OF 2017

GULAB BABURAO GAIKWAD
VERSUS
THE EXECUTIVE ENGINEER KUKDI PROJECT CIRCLE PUNE

...
Advocate for the Petitioner : Shri Bide Dnyaneshwar A.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 08th February, 2022

Per Court:

1. Heard the learned counsel for the petitioner, who is aggrieved by the impugned order passed by the Presiding Officer, Labour Court, Ahmednagar, in Reference (IDA) No.38/2012.

2. The said order has been passed in the backdrop of the factual narration as under:-

(a) The petitioner came to be selected as the Technical Assistant by the Superintending Engineer, Kukdi Project, Pune and was sent for training. On completion of the departmental training of Technical Assistant conducted at Shirur for approximately four months, the petitioner came to be provisionally appointed as Mistry on by the order dated 17.04.1982 on pay of Rs.260/- P.M. in the time scale of Rs.260-10-390-15-420-Extn-15-495 plus usual allowances as admissible. The

appointment order made it clear that though his appointment is made in Kukdi Project, he is liable to be transferred to any other place. On acceptance of the said order of appointment, his services are placed at Kukdi Project by the orders of the Executing Engineer.

(b) As per the petitioner's saying, he was tortured by the officials working in the Department and his caste formed the basis of his torture and he also faced some domestic torture and he, therefore, went to his native place. He was not in a position to send leave application and subsequently, sent it by the Post.

(c) Armed with the medical certificate, he reported for duties on 29.05.1985, but he was not permitted to join duties and on 28.08.1986, his services came to be terminated from 27.10.1982.

(d) Arguing that the termination is without following due procedure of law, the reference was made to the Labour Court and the Labour Court answered the reference partly in the affirmative and declared that the act of the Department in terminating the services of the petitioner is illegal and therefore, quashed and set aside the termination order, however, since the petitioner attained the age of superannuation, the Department was directed to pay monetary compensation of Rs.50,000/- to the petitioner.

3. On perusal of the documents on record, it is apparent that though the appointment of the petitioner was provisionally made on the

post of Mistry by order dated 05.08.1982, within a short span of time, he proceeded to his native place and appeared before the authorities seeking resumption of duties on the basis of the sketchy medical certificate issued by Dr.M.A.Potnis from Ahmednagar, wherein, the doctor certified that the petitioner was under his treatment for Epilepsy since 07.10.1982 and now he is fit to join his duties from 27.05.1985. The Executive Engineer on 27.06.1985 issued a direction and treated unauthorized leave of the petitioner from 25.09.1982 to 30.09.1982 and from 04.10.1982 to 06.10.1982, without pay. Though the Executive Engineer directed sympathetic consideration of his case for considering his absence from 07.10.1982 to 25.05.1982, his services came to be terminated by the Superintending Engineer considering the short tenure of service rendered by him.

4. This gave rise to the reference and the Labour Court rendered the finding to the effect that the termination is illegal, but since the petitioner claimed the relief of reinstatement in service and back wages, the Labour Court recorded that the services rendered was for a brief and short period of time and since he has attained the age of superannuation, the relief of reinstatement with back wages was found to be not justified and therefore, monetary compensation was the only way out for the learned Judge. Recording that the services of the petitioner came to be terminated long back in the year 1982 and when he has already attained

the age of superannuation, monetary compensation of Rs.50,000/- was deemed to be sufficient to meet the ends of justice and accordingly, the compensation has been directed to be paid to the petitioner.

5. On perusal of the entire record, it is apparent that the petitioner rendered his services for a brief period of time as Mistry and he did not bother to be dutiful in seeking permission from the employer before he proceeded on leave and the ground for proceeding on leave, which the learned counsel for the petitioner himself has argued, is that the petitioner was suffering harassment at the hands of the officials, however, after two and half years, he reported back to his employer by producing the medical certificate, which is dubious where, it is certified by the doctor that he was suffering from epilepsy. Barring this certificate, no other document has been produced on record.

Another certificate dated 29.05.1985 from the Civil Surgeon, Ahmednagar, was also produced on record, but when this certificate is perused, the Civil Surgeon only certified that the certificate issued by the private doctor is correct. This leads to the conclusion that the Civil Surgeon has not treated the petitioner nor he is aware of his illness and therefore, the said certificate is of no consequence.

6. Considering his long absence without any justified reason, the services are terminated and the Labour Court is justified in answering the reference in the affirmative by setting aside the termination order, but

since the petitioner has attained the age of superannuation, the reinstatement with back wages was declined to him in the order which is passed in the year 2014 and the compensation of Rs.50,000/- is ordered.

7. In the wake of the above, I do not find any legal infirmity in the impugned order passed by the Labour Court and upholding the same, the Writ Petition is dismissed.

kps

(SMT. BHARATI H. DANGRE, J.)