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

46 WRIT PETITION NO.4738 OF 2007

THE EXECUTIVE ENGINEER, UPPER PAINGANGA PROJECT,
NANDED AND ANR.

VERSUS

RAHEMAN KHAN MANSOOR KHAN

...

Mr A. P. Chaware, Advocate for petitioners;

Mr S. V. Kurundkar, Advocate for respondent

CORAM : SMT. BHARATI DANGRE, J.

DATE : 3rd January, 2022

PER COURT:

1. Heard the learned Counsel, Shri. A. P. Chaware for the petitioners and Shri. Kurundkar for the respondent.
2. The writ petition is filed by the Executive Engineer, Upper Painganga Project Division, Nanded and it's Sub Divisional Officer, assailing the judgment and order dated 08/11/2006 passed by the Industrial Court, Jalna in Revision U.L.P. No.09 of 2006, thereby confirming the judgment and order of the Labour Court in Complaint U.L.P. No.109/1995, dated 28/12/2005.
3. The writ petition came to be admitted on 04/07/2008 with no interim relief.

(2)

Pertinent to note that the petition filed in the year 2007, when it is listed for final hearing in the year 2022, much water has flown under the bridge. It is submitted by the Counsel for the respondent that, during pendency of this writ petition, the respondent, in furtherance of Government Resolution dated 28/05/2001, along with several employees was absorbed on Converted Regular Temporary Establishment (CRT) w.e.f. 04/01/1987. The Resolution contemplated a pay scale of 775-1150 (old) and 2600-4000 (new) to be made applicable to the employees accommodated on CRT. But though the respondent was accommodated on the Converted Regular Temporary Establishment, the benefit in form of monetary consideration was not extended to him, which constrained him to approach this Court by filing Writ Petition No.615/2019. The Division Bench of this Court lately, i.e. on 15/12/2021 has allowed the writ petition, recording that merely on the ground that the petitioner therein was litigating, he cannot be denied the pay scale flowing from the Government Resolution dated 28/05/2001. Resultantly, by recording as under, the writ petition has been allowed in terms of prayer clauses (B) and (C).

“5. It appears that, under the Government Resolution dated 28.05.2001 the decision has been taken regarding the pay scale after conversion to CRT. The name of the petitioner appears at serial no. 36 in Annexure A to the Government Resolution dated 28.05.2001. The matter pending before the learned Single Judge is to the extent of

(3)

back-wages as contended by the learned counsel for the petitioner. The same also would not be an impediment to advance the benefit to the petitioner as per the government Resolution dated 28.05.2001.”

4. It is also stated, that the petitioner continue to render his services to the Department on the post of ‘Mukadam’ but the department continued to pay him on daily wages basis, till the Division Bench of this Court ruled in his favour by holding him entitled for the benefit flowing from the Government Resolution dated 28/05/2001, by according him a fixed pay scale as prescribed in the Resolution. The respondent has attained the age of superannuation on 31/07/2020 and he is still awaiting his pensionary/retiral benefits on account of the pendency of the present petition.

5. The perusal of the paper book reveal that the respondent who was appointed as a ‘Mukadam’ on 01/01/1982 with the Up-Vibhagiya Abhiyanta, Urdhva Painganga Prakalp, Vibhag Kr. 24 and who claims to be working continuously on the work, which was of a permanent nature, is alleged to have been terminated by an oral order w.e.f 01/07/1995. A notice was issued on 29/06/1995 alleging that the complainant remained absent from 19/08/1994 to 30/12/1994 unauthorizedly, and without permission, though he submitted medical certificate, he was not permitted to resume the duties. The alleged

(4)

termination w.e.f. 01/07/1995 was claimed to be unfair labour practice in violation of the provisions under Section 25 of Industrial Dispute Act.

The complainant approached the Labour Court at Jalna by filing Complaint (U.L.P.) No.109/1995 which was contested by the petitioners herein and the contention regarding continuous service was specifically denied. Further, the medical certificate produced by the complainant was also doubted. Applicability of provisions of Sections 25-F and 25-G was denied by propagating that the termination is not for non-availability of work but it was for misconduct of remaining absent continuously and despite notice being served, since no explanation came forth from the employee, the enquiry was deemed to be unnecessary, and therefore the termination was justified.

The learned Labour Court, by considering the material available on record, allowed the Complaint by rulling in favour of the complainant and declared that the respondents are engaged in unfair practice under Item No.1 of Clause (a) and (b) to Schedule IV of the MRTP and PULP Act, by terminating service of the complainant w.e.f. 01/07/1995. A finding is rendered to the effect that, the allegation that the employee has submitted false medical certificate cannot be accepted, particularly, Government has revolved a policy for providing

(5)

earned leave and leave without pay, even for daily wagers. The complainant who had produced on record the medical certificate issued by Civil Surgeon, Nanded had recommended leave from 19/08/1994 to 30/12/1994. Merely because the Medical Board who examined him, but did not recommend leave, was found to be not a ground to reject his explanation. Recording the termination is by way of victimization and not in good faith but in colourable exercise of power, the order is passed.

Resultantly, the termination order was set aside and the complainant was directed to be reinstated w.e.f. 01/07/1995 on his original post with continuity. The revision was filed before the Industrial Court vide Revision (U.L.P.) No.9/2006, wherein by order dated 08/11/2006, the learned Industrial Court at Jalna upheld the findings of the Labour Court and dismissed the revision application. The concurrent finding rendered by the Courts below is that if the termination of the complainant was on the ground of misconduct/absenteeism, in absence of an enquiry being conducted, the termination cannot be sustained. The Labour Court has specifically recorded that the Complainant was not dismissed on account of non availability of work but on account of his continuous absence. Recording that the opportunity was not given to the complainant to deal with the allegation of continuous absence, in the

(6)

wake of the evidence adduced by the Complainant and the witnesses of the respondent, the Labour Court had rendered a specific finding in respect of his illness. Recording that the complainant has joined on daily wages/labour from 04/01/1982 and has rendered 12 years of service, he was entitled for the benefits of earned leave and leave without pay, considering the aforesaid circumstances the termination was held to be by way of victimization and not in good faith.

Based on the aforesaid reasoning, the impugned order was set aside and reinstatement was directed.

6. On perusal of the concurrent finding rendered in favour of the respondent, I see no reason to interfere with the same since both the Courts below have recorded a finding based on fact. In any case, since the complainant has now superannuated on attaining age of superannuation and has rendered his service to the department as 'Mukadam', till his superannuation is one more ground which persuade me not to interfere with the concurrent finding rendered by the Courts below.

7. Necessarily, the writ petition filed by the petitioner is dismissed. The respondent is held entitled for the benefits flowing from the order of the Division Bench of this Court dated 15/12/2021. In absence of

(7)

any other impediment for withholding the pension of the respondent, the petitioner is directed to release his pensionary benefits forthwith.

(SMT. BHARATI DANGRE, J.)

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