

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

WRIT PETITION NO.5986 OF 2019

Anil Kisanrao Patil (Died)
Through its legal heirs

1-A. Chaya wd/o. Anil Patil (Ghuge)
Age : 49 years, Occu : Household

1-B. Shital D/o. Anil Patil (Ghuge)
Age : 22 years, Occu : Household,

1-C. Shubham D/o. Anil Patil (Ghuge)
Age : 20 years, Occu : Education

All R/o. Sainik Colony, Hingoli
Tq. & Dist. Hingoli.

.. Petitioners

Versus

1. Zilla Parishad Hingoli
Through its Chief Executive Officers,
Zilla Parishad Hingoli,
Tq. & Dist. Hingoli

2. Block Development Officer,
Panchayat Samiti Sengaon
Tq. Sengaon, Dist. Hingoli

.. Respondents

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Mr. A.R. Tapse h/f. Mr. P.M. Shinde, Advocate for the petitioner
Mr. Hemraj Kshirsagar, Advocate for Respondent No.1

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CORAM : SANDEEP V. MARNE, J.

Reserved on : 17.10.2022

Pronounced on : 20.10.2022

JUDGMENT :

1. The petitioner takes exception to the judgment and order dated 07.08.2018 passed by the Industrial Court, Jalna in Revision

(ULP) No.19 of 2016 by which the judgment and order dated 08.03.2016 passed by the Labour Court, Nanded in Complaint (ULP) No.25 of 2014 is set aside and that complaint is remanded to the Labour Court for fresh trial.

2. The petitioner was appointed as Junior Assistant (accounts) in respondent - Zilla Parishad. A charge-sheet was issued to him on 12.07.2004 alleging misconduct of disobedience, arrogant behavior and absenteeism, which led to imposition of penalty of warning on him. Another charge-sheet was issued to him on 03.12.2007 which led to issuance of order dated 19.05.2012 imposing the penalty of dismissal from service on him.

3. Petitioner assailed the dismissal order before Labour Court, Nanded by filing Complaint (ULP) No.25 of 2014. During pendency of the complaint before the Labour Court, the dismissal order was stayed by order dated 15.05.2015, on account of which the petitioner was reinstated in service with effect from 15.01.2016. The Labour Court was pleased to partly allow the complaint by judgment and order dated 08.03.2016, by which the dismissal order was set aside and the petitioner was granted continuity of service from 19.05.2012 till date of reinstatement on 15.01.2016. Backwages

were also granted in respect of that period.

4. Aggrieved by the order passed by the Labour Court, the Zilla Parishad filed Revision (ULP) No.19 of 2016 before Industrial Court, Jalna, which has set aside the order of Labour Court by its judgment and order dated 07.08.2018. The Complaint (ULP) No.25 of 2014 is remanded to the Labour Court for fresh trial by recasting the issues as directed in the judgment of the Industrial Court. The Labour Court has been directed to first record findings of the preliminary issues, as to whether the petitioner is a workman, whether enquiry was fair and proper and whether findings of the enquiry are perverse.

5. The petitioner has filed the present petition challenging the judgment and order dated 07.08.2018 passed by the Industrial Court. During pendency of the present petition, the petitioner unfortunately expired and his legal heirs are brought on record. By order dated 09.12.2019 this Court was pleased to direct that Complaint (ULP) No.25 of 2014 would be adjourned. It appears that on account of the order dated 09.12.2019 proceedings remanded to the Labour Court have not been decided.

6. Mr. A.R. Tapse, the learned counsel for the petitioner has

submitted that on account of death of the petitioner, it would not be possible for him to either lead additional evidence or to cross-examine the witnesses of Zilla Parishad. He therefore prays for setting aside the judgment and order dated 07.08.2018 passed by the Industrial Court.

7. Per contra, Mr. Hemraj Kshirsagar, learned advocate for the respondent - Zilla Parishad opposes the petition and supports the order passed by the Industrial Court. He would submit that mere death of the petitioner would not be a reason to saddle the respondent - Zilla Parishad with liability to pay backwages. He would submit that the evidence was already adduced before the Labour Court in the first round and that the matter can be decided by the Labour Court on the basis of that evidence. He prays for dismissal of the petition.

8. I have heard the learned Counsel for the parties. It is seen that the employee was dismissed from service on 19.05.2012. In pursuance of the interim order granted by the Labour Court on 15.05.2015 he was reinstated in service on 15.01.2016. The exact date of death of the employee has not been disclosed anywhere by the parties. It is clear that he continued to work from 15.01.2016

onwards. Now, the employee is unfortunately no more. The Industrial Court has granted liberty to the parties to lead further / additional evidence, which in my opinion, would now not be possible on account of death of the employee.

9. In the peculiar facts and circumstances of the case, ends of justice would meet if a quietus is given to the entire case by directing the respondent – Zilla Parishad to treat the deceased employee as in service till the date of his retirement / death and to grant all admissible pensionary benefits to his legal heirs. For this purpose, the order passed by the Industrial Court on 07.08.2018 is required to be set aside. This would restore the order passed by the Labour Court on 08.03.2016. However considering the peculiar facts and circumstances of the case, it would not be appropriate to saddle the respondents - Zilla Parishad with the burden of backwages for the period from 19.05.2012 to 15.01.2016. Therefore, the order passed by the Labour Court on 08.03.2016 is required to be modified to that extent.

10. I therefore proceed to pass the following order.

ORDER

(i) The judgment and order dated 07.08.2018 passed by the

Industrial Court, Jalna is set aside.

(ii) Judgment and order dated 08.03.2016 passed by the Labour Court, Nanded is upheld, but modified to the extent that the deceased employee or his legal heirs shall not be entitled to any backwages during the period from 19.05.2012 till 15.01.2016, however there would be continuity of service during that period.

(iii) The dismissed employee shall be deemed to have been in service of Zilla Parishad till the date of his retirement / death and all the admissible retirement benefits be paid to the legal heirs of the deceased employee within a period of four months from today.

11. The writ petition is accordingly partly allowed.

(SANDEEP V. MARNE, J.)

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