

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8280 OF 2017

Ganesh s/o Balaram Sarda,
Age-59 years, Occu-Private Service (Watchman),
R/o Near Siddeshwar School,
Wasmatnagar, Tq.Wasmatnagar,
Dist.Hingoli

-- PETITIONER

VERSUS

The Liquidator (District Collector Hingoli)
Marathwada Sahakari Sakhar Karkhana,
Dongarkheda,
Collector Office, Hingoli,
Tq. and Dist.Hingoli

-- RESPONDENT

Mr.M.K.Deshpande, Advocate for the petitioner.
Mr.A.A.Jagatkar, AGP for State.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 2, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the petitioner and the learned AGP appearing for the Liquidator i.e. the District Collector, Hingoli of Marathwada Sahakari Sakhar Karkhana, Dongarkhada.

2. The petitioner is aggrieved by an order passed by the Labour Court in I.D.NO.49/2012, which rejected the application of the petitioner on 06/06/2016.

A chequered history revolving around the services of the petitioner can be briefly highlighted as under :-

On 08/04/1988, the petitioner joined the Marathwada Sahakari Sakhar Karkhana Ltd, Shivaji Nagar, Post Dongarkada, Tq.Kalamnuri, Dist.Parbhani, now in District Hingoli as a "Wireman". His appointment is made on probation on a consolidated salary of Rs.800/- per month. He was confirmed in service and at that time, he was drawing a salary of Rs.2,100/- per month.

On 05/11/1992, the petitioner was placed under suspension and the charge sheet was issued to him on 10/02/1993 contemplating a departmental enquiry into the alleged charges of misconduct. On conducting an enquiry, the Enquiry Officer recommended his dismissal from service and pursuant thereto on 26/06/1993, the petitioner came to be dismissed from his services by the respondent *Karkhana*.

3. The dismissal from service constrained him, to file Complaint (ULP) No.164/1993 before the Labour Court at Jalna alleging unfair

labour practice under Section 28 r/w Item No.1 Clause (A), (B), (F) and (G) of Schedule IV of the MRTU and PULP Act, 1971. He pleaded that the suspension order is vague and is against the principles of natural justice and that the decision of the Enquiry Officer is unfair and the punishment of dismissal imposed is disproportionate to the nature of allegations levelled against him and therefore it ought to be quashed and set aside.

The Labour Court, for the reasons recorded in the detail judgment, arrived at a conclusion that the complaint deserves to be allowed with costs. However, in paragraph No.18, the following observations were made, which read as under :-

"In view of my findings to issue Nos.(i) to (v) in affirmative, the complaint in hand deserves to be allowed with costs. However, it is revealed from the oral evidence of complainant Exh.U-9 that he has submitted resignation to the Management after six months of his filing complaint in the Court, however, they have not considered it. They have not paid the subsistence allowance of Rs.8,968/- and kept his resignation lingering, due to which he is not getting job elsewhere. He has prayed for full back - wages from the date of dismissal till the date of sanction of his resignation. Considering the conduct and intention of

respondents in passing the dismissal order; I accept the evidence of the complainant and hold that he is entitled for full back wages from the date of dismissal till the sanction of his resignation by the Management."

As a consequence, the complaint came to be allowed and it was declared that the respondents have engaged in unfair labour practice enumerated in Item 1 Clause (a), (b), (f) and (g) of the MRTU and PULP Act and they were directed to cease and desist from indulging in unfair labour practice, henceforth. The petitioner was directed to be reinstated in service with continuity and full back wages, subject to a stipulation that if he intended to join the services by withdrawing his resignation submitted by him, he may do so. The respondents were directed to work out back wages of the complainant and pay the same to him within a period of 2 months from the date of the award, else the back wages were to carry simple interest @ 6% per annum from the date of the order till its realization.

4. Since the above order was not implemented, the petitioner filed an application (IDA) No.5/1998 before the Labour Court at Jalna for recovery of payment of the amount with interest from the date of order

till realization of the amount.

On 02/12/2003, IDA Application No.5/1998 was partly allowed with the following order being passed :-

"I. The petition is partly allowed.

II. The prayer for direction to the respondents to accept the resignation is rejected.

III. The prayer for direction to the respondents to pay the salary of 4 months also rejected for want of jurisdiction.

IV. The respondents are directed to make the calculations of the back wages from the date of termination of the petitioner till acceptance of his resignation or actual resuming the duty.

V. The amount of back wages shall be paid @ 6% per annum interest from termination till resuming or acceptance of the resignation.

VI. No order as to costs."

5. This order being passed on 02/12/2003, constrained the petitioner to institute an application under 48(1) of the MRTU and PULP Act in the Labour Court for initiation of contempt action against the named respondents, but in the wake of the fact that the Karkhana was under liquidation, he deemed it fit to withdraw the said application

on 04/04/2009, but filed Criminal Application no.18/2009 for non implementation of the judgment. The proceedings were initiated, but since the Karkhana was under liquidation, it was held that the proceedings are not maintainable, as the name of the Liquidator/Collector was not brought on record and ultimately on 19/08/2016, since there were no steps taken to bring the Liquidator/Collector on record, the criminal application came to be dismissed for want of taking necessary steps.

6. On 19/10/2012, the petitioner again filed an application (IDA) No.49/2012 seeking implementation of the judgment and order passed by the Labour Court, Jalna in his earlier application No.IDA No.5/1998 dated 02/12/2003. This application came to be decided by an order dated 06/06/2016 and the application came to be rejected by recording that the amount i.e. due to the petitioner has already been made over to him and since he has rendered service of 6 years 8 months and 23 days from 08/04/1988 to 31/12/1994, his salary alongwith all the ancillary benefits was deposited in the Court and the amount of Rs.24,110/- was withdrawn by him. Further by recording that from 14/05/2002, the Karkhana has gone into liquidation and the wages of

all the employees were accordingly disbursed, but since the petitioner did not resume his duties after 31/12/1994 and did not render his services to the Karkhana, but to the contrary from 12/08/2011, he was working with Vaibhav Liquors Pvt.Ltd.,Dist. Washim, the amount of salary due to him, for the services rendered to the respondent, was calculated and paid to him.

7. The learned counsel for the petitioner vehemently submitted that the impugned order do not take into account the directions issued by the Labour Court on 23/03/1998 when the Court had directed his reinstatement with continuity and full back wages. It is pertinent to note that the case of the petitioner was to the effect that he was not interested in continuing the services with the Karkhana and therefore he had tendered his resignation and therefore while granting reinstatement on 23/03/1998, the learned Judge observed that he shall be reinstated in service if he intend to join the service by withdrawing the resignation already submitted by him. When he approached for the second time before the Labour Court, on 02/12/2003, the learned Labour Court has specifically recorded in it's order that in the deposition, the petitioner is stating that he do not want to remain in

services of the respondent and therefore he had tendered the resignation but his grievance was that the resignation was neither accepted nor rejected by the respondent. But at the same time, he also admitted that he did not join the service. In the wake of this admission, on the second occasion, the Labour Court, Jalna directed to make calculations of the back wages due to the petitioner from the date of his termination till acceptance of his resignation or actual resumption of the duty.

When the learned counsel is repeatedly asked whether he has made any attempt to resume his services, his answer is to the effect that his relationship with the Management was not good and therefore he was not desirous of resuming the services. In any case, he keep on harping that his resignation has to be either accepted or rejected.

8. When the impugned order dated 06/06/2016 is carefully perused, the learned Judge has recorded that pursuant to the interim orders passed by the Court, the petitioner was permitted to resume the duties on 19/04/1994. However, he applied for leave and his leave came to be sanctioned from 22/11/1994 to 31/12/1994, but on expiry of the said leave, he ought to have resume his duties, but instead the

complainant submitted an application to the employer to the effect that sick leave should be granted, till the outcome of the proceedings filed by him in form of Proceeding No.164/1993. This application filed by the petitioner was also exhibited by the Court. The learned Judge has further recorded on 15/01/1995, 12/02/1995 and 18/04/1995, the employer/Karkhana had given letters to the petitioner to resume his duties, but he failed to abide by the said directions.

This observation of the learned Judge, as recorded, is not contradicted by the petitioner by bringing any contrary material on record. The impugned order clearly record the amount due and payable to him was deposited in the Court, which has withdrawn by him without any demur and all these aspects were admitted by him in the cross examination. Recording that from 31/12/1994, the petitioner never reported to the Sakhar Karkhana and hence he is not held entitled for a penny more than what he has received by him, is the finding recorded.

In the wake of the aforesaid reasoning, his application vide IDA No.49/2012 has been rejected.

9. I see no legal infirmity in the impugned order, in the backdrop of

the facts and events and particularly when the orders passed by the learned Labour Court in favour of the petitioner are very clear and direct the Karkhana to pay the wages till his resignation is accepted or he resumed his duty and the record reveal that though he was afforded multiple opportunities to resume duties, he failed to do so. It has also been brought on record that he was engaged in another employment and this fact is not rebutted by the petitioner.

10. In the wake of the above, by upholding the impugned order, Rule is discharged. No order as to costs.

(BHARATI H. DANGRE, J.)