

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5351 OF 2022

The Chief Executive Officer & Anr. ...Petitioners
V/s.
Arun Laxman Banubakode & Anr. ...Respondents

Mr. Rohit Sakhadeo for the Petitioners
Mr. M. S. Topkar a/w Adv. Pavitra Manish a/w Adv. Saurabh Mandlik
for the Respondent No. 1.

CORAM : NITIN W. SAMBRE, J.

DATED : 30th NOVEMBER, 2022

P.C.:

1. The present writ petition raises a challenge to the judgment dated 14/10/2019 delivered by the Industrial Court, Kolhapur in Complaint (ULP) No. 45 of 2015. The Industrial Court has allowed the complaint partly referred by the present respondent-employee, thereby declaring unfair labour practice under Item-9 of Sch.-IV of the M.R.T.U. & P.U.L.P. Act, 1971 with directions to the petitioner-employer to desist or cease from engaging in unfair labour practices. The impugned order of punishment before the Industrial Court was quashed and set aside with further observations that the respondent-employee will be entitled to consequential benefits with directions to pay entire arrears within

two months, failing which same was to be carrying interest @ 6% per annum.

2. The facts necessary for deciding the petition are as under:

3. The respondent-employee, while working as a vaccinator with petitioner- Zilla Parishad since 20/04/1979 was promoted to the post of Health Assistant. It is claimed that on 13/10/1998 the respondent-employee suffered a paralysis attack and after taking appropriate treatment he has resumed his duty on 23/03/2000. It is claimed by the respondent-employee that the officers started harassing him and was not given proper wage benefits. As such, since 30/10/2001 respondent-employee proceeded on hunger strike and also published certain news item, which has resulted into framing of four charges against him, which are as under-

a) Charge No. 1 - The Complainant issued notice of hunger strike and started such hunger strike since 30.10.2001.

b) Charge No. 2 - During the period of hunger strike the Complainant remained absent without any application.

c) Charge No. 3 - He did not present himself for medical examination though was intimated vide letter dated 02.05.2002.

d) Charge No. 4 - The Complainant published in newspaper wrong news in respect of his services on 31.10.2002.

4. The respondent after having resisted the enquiry proceedings, was served with a enquiry report by which it was recorded that the charge No. 1 was completely proved viz. he

having been proceeded on hunger strike and charge no. 4 partial i.e. having published incorrect news in the newspaper about his services with the petitioner - Zilla Parishad. As a sequel of above, after serving him notice, punishment of bringing him down to the lower scale vide order dated 30/04/2005 came to be delivered.

5. The respondent-employee feeling aggrieved preferred an appeal before the State Government and the punishment was accordingly modified thereby stopping five annual increments permanently vide order dated 19/11/2007. The respondent feeling aggrieved preferred aforesaid complaint.

6. The submissions of learned counsel for the petitioner-employer are, the respondent-employee has chosen not to lead any evidence before the enquiry officer. As such, the enquiry officer has recorded findings on the charge no. 1 and charge no. 4 as the charge nos. 2 and 3 were not proved. The punishment imposed by the petitioner-employer was reduced by the Appellate Authority. According to him, once the respondent-employee has not contested the enquiry proceedings by leading evidence, the findings of the enquiry officer attained finality and only option left to consider whether the punishment imposed is disproportionate to the charge proved. According to him, the modification of

punishment by the Appellate Authority sufficiently redresses the grievance of the respondent-employee and that being so, the Industrial Court ought not to have caused interference. Apart from above, he would urge that the order of the Industrial Court sans reasons in support of the findings recorded as it is vaguely observed that the impugned order of punishment is in breach of the rules without specifying the same.

7. While countering the aforesaid submissions, learned Counsel for the respondent-employee would support the order of the Industrial Court as according to him, there is hardly any error in the order of the Industrial Court particularly when the Industrial Court has noticed that only one charge was proved as to that of the respondent-employee proceeded on hunger strike, which cannot be termed as an illegal act on the part of the respondent-employee.

8. He would further urge that the charge no. 4 which is claimed to be partially proved against the respondent-employee ought not to have been formed a basis for imposing major punishment of stoppage of five increments with permanent effect.

9. I have considered the aforesaid submissions.

10. As against the alleged injustice caused to the respondent-

employee it appears that the respondent-employee has taken recourse to the hunger strike (following the principle of non-violence) and that of taking his grievance to the media.

11. As far as taking recourse of the hunger strike is concerned, it cannot be said that such an act needs to be deprecated on the part of the respondent-employee particularly when he claims that his grievance was not redressed. However, while taking recourse to such a step, it is duty of the respondent-employee not to malign the image and good will of the petitioner-employer in whose employment he was getting salary for his services rendered.

12. The fact remains that forming such hunger strike and alleged injustice meted out to him in the discharge of service, he has taken recourse to taking his grievance with the media, which has prompted the authority to charge-sheet him and based on the material on record the charges were answered to be proved.

13. The Appellate Authority while considering the very conduct of the respondent-employee has reduced the punishment from reduction in rank to that of the stoppage of five increments with cumulative/permanent effect. The Apex Court in the matter of ***Kulwant Singh Gill Vs. The State of Punjab*** reported in **1990 II CLR 689** has already ruled that in case if the punishment of

stoppage of increment is ordered with permanent effect, same amounts to a major penalty and not a minor penalty. The stoppage of increment without permanent effect is termed as a minor penalty.

14. As such, what can be noticed is, the respondent-employee is saddled with punishment of major penalty by both i.e. the disciplinary authority so also by the appellate authority.

15. This Court is not required to substitute its findings on the issue of punishment, however, is required to be sensitive of two of the issues - (a) that the respondent has followed the principles of non-violence and (b) that the respondent has already superannuated from the service in 31/12/2013.

16. In this background, in my opinion the order impugned is not sustainable particularly when the counsel for the petitioner-employer was justified in pointing out that the Industrial Court has failed to record any reasons in support of the findings recorded.

17. As such, the petition is partly allowed. The order impugned passed by the Industrial Court is hereby quashed and set aside.

18. The punishment of stoppage of five increments with permanent effect is reduced to that of stoppage of three increments with permanent effect.

19. The respective parties are required to submit their claim for withdrawal of the amount which is already deposited by the petitioner-employer before the Industrial Court, Kolhapur. The Industrial Court, Kolhapur shall delve upon the entitlement of the respondent-employee to the benefit pursuant to the aforesaid punishment.

20. The petitioner-employer shall take appropriate steps within period of three months from today by fixing the appropriate pension of the respondent-employee to which he is entitled considering the substituted punishment.

(NITIN W. SAMBRE, J.)