

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

WRIT PETITION NO. 14366 OF 2018

Mahesh Gaurishankar Lohogaonkar	.. Petitioner
Versus	
Nashik Super Tool Co.Pvt.Ltd	.. Respondent

WITH

WRIT PETITION NO. 7410 OF 2019

Ramesh Harchand Sali	.. Petitioner
Versus	
Nashik Super Tool Co.Pvt.Ltd	.. Respondent

WITH

WRIT PETITION NO. 13180 OF 2019

Pundalik Hari Aswar	.. Petitioner
Versus	
Nashik Super Tool Co.Pvt.Ltd	.. Respondent

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Mr. Neel Girish Helekar with Advocate Kanhaiya S. Yadav for the petitioner.

**CORAM: RAVINDRA V. GHUGE, J.
DATED : 25th JANUARY, 2022**

P.C:-

1 These three petitioners are aggrieved by the identical judgments dated 22/07/2016 delivered by the Labour Court in three ULP complaints filed by the petitioners. They are also aggrieved by the judgment dated 17/01/2018 delivered by the Industrial Court in the Three Revision Petitions filed by them.

2 There is no dispute that the petitioners had earlier reached this Court as successful respondents in Writ Petition No. 5407/1999 which was filed by the Management, challenging the grant of full back wages purportedly without there being any evidence of the workers having secured an alternate employment. By the order dtd 3/9/2015, passed by this Court (Coram : N.M. Jamdar, J), it was held that the payment of full back wages cannot be mechanically granted and by setting aside the impugned judgments only to the extent of grant of full back wages, the matters were remanded to the Labour Court to decide the quantum of back wages to be paid to the workers. In these circumstances, the Three ULP Complaints were taken up by the Labour Court for a decision on the quantum of back wages.

3 Pursuant to the above, the Labour Court concluded that these petitioners were entitled only to the extent of 50% back wages from the date of their termination i.e. 30/11/1985 till the date of their reinstatement i.e. 15/12/1998. This view was sustained by the Industrial Court vide its judgment dated 17/1/2018 and the Revision Petitions filed by the workers, were dismissed.

4 The record reveals that these petitioners were dismissed from service on the proved charge of indulging in 'Go-slow'. They preferred ULP Complaints in March 1986. By

judgment dated 6/12/1994, they were granted reinstatement in service with full back wages by the Labour Court, with continuity. These judgments were sustained by the Industrial Court and it was by the order of this Court dated 3/9/2015 that the matters were remanded to the Labour Court for deciding the quantum of back wages.

5 The learned counsel for the petitioners has strenuously canvassed that each of them filed an affidavit before the Labour Court in their respective complaints. They were cross-examined by the Management. The Management did not lead oral evidence. The learned counsel for the petitioners therefore places reliance on the judgment delivered by the Hon'ble Apex Court in the matter of Novartis India Ltd., Vs. State of West Bengal and others, 2009 LLR 113(SC), to support his contention that the onus and burden to prove that the employee is not in gainful employment, lies on his shoulders and once he discharges the same, the burden would shift to the management to disprove his assertion of not being in gainful employment.

6 I find from these three cases that each of these three employees has admitted in cross-examination that they have not produced any evidence to indicate as to whether they had made any effort to seek alternate employment or even employment on

daily wages so as to financially support the family. It is further admitted that they have not adduced evidence to indicate as to how did the family survive for a period of about 10 years without employment.

7 In the matter of J.K. Synthetics Vs. K.P. Agrawal & Anr. 2007 (2) SCR 60, the Hon'ble Apex Court had held that the least that is expected from an employee is to step into the witness box. As such, by making a bald statement in the affidavit in lieu of examination in chief that the employee is not in gainful employment and that too, when the unemployment period was more than 10 years, cannot be said to be such evidence on the basis of which the Management could be saddled with 100% back wages. In all these cases, the petitioners are granted 50% back wages by the Labour Court and the said order has been sustained by the Industrial Court.

8 It is obvious from the evidence led by the workers that they have simply contended that they are not gainfully employed. There is no explanation as to how did these workers survive for more than 10 years during their unemployment when they had family members to support and children were taking education. There is not a whisper by way of a pleading as to whether they applied for alternate employment with any establishment/factory etc. and whether they were refused employment by any employer.

9 In the matter of *U.P. State Brassware Corporation Ltd & Anr vs. Udai Narain Pandey 2006 LLR, 214 (SC)*, it has been held that there cannot be a straight jacket formula to grant full back wages for the entire period of unemployment. Such relief cannot be granted mechanically.

10 The Hon'ble Apex Court has concluded in catena of judgments that in the absence of sufficient evidence of not being in gainful employment over a long period of unemployment, balanced relief as regards back wages can be granted to the employee.

11 In view of the above, I do not find that the Labour Court and the Industrial Court have committed any error in granting 50% back wages. These three petitions, are therefore, dismissed.

RAVINDRA V. GHUGE, J