

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 659 OF 2020

M/s.Century Enka Ltd .. Petitioner
Versus
Shri Ratansingh Prakashsingh Bange .. Respondent

WITH
INTERIM APPLICATION NO. 523 OF 2022
IN
WRIT PETITION NO.659 OF 2020

Ratansingh Prakashsingh Bange .. Applicant
In the matter between
M/s.Century Enka Ltd .. Petitioner
Versus
Shri Ratansingh Prakashsingh Bange .. Respondent

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Mr.Kiran Bapat i/b Ms.Desai & Desai Associates for petitioner.
Mr. Y.B. Lengare for the applicant.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 14th FEBRUARY, 2022

P.C:-

1 This matter was admitted by order dated 25/2/2021.
On the condition of depositing the back wages, the impugned
award granting reinstatement in service with continuity and full
back wages, dated 9/8/2013 delivered by the first Labour Court
Pune, had been stayed.

2 The second party workman before the Labour Court has preferred Civil Application No.523 of 2022 seeking a direction for depositing remaining back wages as well as consequential reliefs. However, the Writ Petition is itself taken up by consent for a final hearing.

3 Having heard the learned counsel for the respective sides for quite some time, it would be apposite to reproduce the admitted factors hereunder :-

- (a) The respondent worker joined duties as a machine operator on 1/2/1982.
- (b) In between 1982 and 1998, he has received 9 orders of suspension, for minor misconducts, as punishment.
- (c) Vide charge-sheet dated 2/4/1999, an allegation of unauthorized absence for 57 days between January 1998 till December 1998, was levelled upon him.
- (d) Unless there are three instances of unauthorized absenteeism in a calendar year, the charge of habitual absenteeism would not be sustained.
- (e) The Enquiry Officer held that the workman was guilty of habitual absence without leave as the number of his absence exceeded three days.
- (f) By order dated 28/9/1999, the workman was dismissed from service.
- (g) The worker raised an industrial dispute under Section 2A

of the Industrial Disputes Act, 1947 and being a deemed industrial dispute, the matter was referred to the First Labour Court, Pune for adjudication, which was registered as Reference (IDA) No.527 of 2000.

(h) In deference to the settled position of law, the Labour Court framed 2 issues pertaining to the fairness of the enquiry and the legality of the findings of the Enquiry Officer.

(i) By the Part-1 award dated 11/8/2016, the Labour Court concluded that the Enquiry was conducted in adherence to the principles of natural justice and could not be vitiated. It also concluded that the findings of the Enquiry Officer are not perverse.

(j) The workman has not challenged the part-1 award before any Court.

(k) In the final award dated 9/8/2019 impugned in this petition, the Labour Court, though concluded that the surviving issue was whether the punishment was shockingly disproportionate and whether the same could be modified as per Section 11A of the Industrial Disputes Act, 1947, granted reinstatement in service with continuity and full back wages to the workman.

4 Having considered the record available and the submissions of the learned counsel for the respective sides, it is apparent that the Labour Court was aware of the legal position

that, once the enquiry is sustained and the findings of the Enquiry Officer are accepted, it could only consider the proportionality of the punishment. Under Section 11A, it could consider whether a punishment lesser than the one amounting to a shockingly disproportionate punishment could be granted. Surprisingly, the Labour Court granted reinstatement in service with continuity and full back wages with all consequential benefits from the date of dismissal and apparently lost sight of the fact that it was supposed to mould the relief under Section 11A, in view of The Workmen of Firestone Tyre & Rubber Co. of India (Pvt) Ltd Vs. The Management and ors, 1973 AIR 1227. By the impugned order, it actually rewarded the worker whose misconduct was proved.

5 In the light of the above, as the impugned award would not be sustainable, considering the scope of Section 11A, this Court, while exercising its jurisdiction under the Writ of Certiorari, can suitably mould the relief.

6 As the workman was unauthorizedly absent for 57 days and the earlier 9 punishments of suspension, which can be considered as an aggravating factor, are not in relation to any act of unauthorized absenteeism, the punishment of dismissal from service would be shockingly disproportionate. Reinstatement in service would, therefore, be consequential. However, the workman has attained the age of superannuation on 4/1/2021

and he was granted reinstatement in service by the Labour Court vide the award dated 9/8/2019. The award was published by the competent authority on 1/11/2019 and 30 days thereafter, it has become enforceable, i.e. from 1/12/2019.

7 The past service record of the workman is highly blemished and is an aggravating factor. Taking into account such factors, the Labour Court, while granting reinstatement in service and continuity, should have deprived the workman of a quantum of the back wages so that the punishment would be suitably moulded under Section 11A. This aspect has been lost sight of by the Labour Court which probably carried an impression, as is visible from paragraphs 19 and 20 of the impugned award, that it was left with no option, but to grant the entire benefits to the workman overlooking the fact that the charge of unauthorized absenteeism was proved and the past service record was highly blemished.

8 In view of the above, this Petition is partly allowed. The impugned award of the Labour Court dated 9/8/2019, is partly confirmed to the extent of granting reinstatement in service with continuity of service to the respondent workman. The impugned award to the extent of monetary benefits, is modified as under :-

(a) 25% back wages are granted to the workman from 28/9/1999 till 30/11/2019.

(b) From the day the award became operable on 01/12/2019 till the superannuation of the respondent on 4/1/2021, he would be entitled for full back wages.

(c) Gratuity amount will be paid by treating the workman to be in service till 4/1/2021 and the amount already paid would be adjusted.

(d) The PF Contributions held by the Trust, as informed by Shri Bapat, would also be payable.

(e) In the event the respondent is entitled for pension, the necessary papers be processed so as to enable the payment of such pension, if not already forwarded.

(f) The petitioner shall calculate the amounts to be paid to the respondent workman, by adjusting the amounts already paid, on or before 31/3/2022. A chart containing the specific details of the calculations would also be supplied to the workman along with the payment by demand draft.

9 The amount deposited by the petitioner Management in this Court can be withdrawn by the Management, on or after 31/3/2022 with accrued interest, if any.

10 Rule is made partly absolute in the above terms.

11 In view of the above, the Interim Application does not survive and is disposed off.

RAVINDRA V. GHUGE, J