

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1429 OF 2018

Shaikh Jamal Shaikh Chand

Vs.

Maharashtra State Road Transport Corporation, Yavatmal, Through its Divisional
Controller

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. S. Gawai, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/07/2022

1. Mr. Jagdale, learned counsel for the petitioner is absent.

2. The petition raises a very limited issue. The factual compass is as under.:

a) The petitioner had filed complaint ULP No. 9/2001 to challenge dismissal on 2.1.1999, which was dismissed by the Labour Court, Yavatmal on 31.12.2008.

b) Revision ULP No.06/2009 before the Industrial Court which was decided on 9.6.2010 granted relief of reinstatement with continuity of service and full back-wages, which was modified in Writ Petition No.2332 of 2011 by the High Court reducing the back-wages up to 20 %.

3. It was contended that this order of the learned Industrial Court dated 9.6.2010 as modified by

the High Court was not complied with. Proceedings under Section 33(C)(2) of the Industrial Dispute Act, 1947 (herein referred as “the I.D. Act”) were filed by the petitioner seeking full back-wages to the tune of Rs.4,77,180/-, which amount to 100 % of the back-wages for the duration 5.7.2010 to 23.2.2012. The learned Industrial Court observed that in Writ Petition No.2332 of 2011, this Court had reduced the back-wages from 100 % to 20 % and therefore, the question of granting 100 % back-wages did not arise at all.

4. Mr. Gawai, learned counsel for the respondent invites my attention to the findings by the learned Labour Court in para 9 (page 21) of the impugned order wherein it has been observed that the pleading of the applicant/petitioner discloses that he had received 20 % back-wages. That being the position, there was no question of the petitioner claiming anything more than that on account of back-wages. That being the position, the findings of the learned Labour Court, which holds that the claim of the petitioner for 100 % back-wages was not maintainable under Section 33 (C)(2) of the I.D. Act, which is merely a recovery proceedings cannot be faulted with. This position is also spelt out from ***State Bank of India Vs. Ram Chandra Dubey and others AIR 2000 SC 3734*** and ***State of U.P and another Vs. Brijpal Singh 2005 (8) SCC 58*** both of which hold that under Section 33 (C)(2) of the I.D. Act

the right to money or benefit which is sought to be executed must be an existing one which is already adjudicated upon and therefore, would indicate that there cannot be any adjudication in that regard under Section 33 (C)(2) of the I.D. Act. That being the position, I do not see any infirmity in the impugned judgment.

5. The writ petition is devoid of any merit and is accordingly dismissed.

JUDGE

Sarkate