

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

WRIT PETITION NO.314/2021

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

___ Vs. ___

RESPONDENTS : 1. Pranhans Nilkanth Turankar,
aged 36 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines,
Nagpur.

AND

WRIT PETITION NO. 935 OF 2021

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

___ Vs. ___

RESPONDENTS : 1. Shahjad Khan Pathan
aged 36 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 1920 OF 2021

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

___ Vs. ___

RESPONDENTS : 1. Sanjay Sadashiv Goulkar
aged 33 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 1468 OF 2021

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

___ Vs. ___

RESPONDENTS : 1. Sanjay Ramrao Shindekar
aged 33 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 3987 OF 2022

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

— Vs. —

RESPONDENTS : 1. Nitin Marotrao Khode
aged 33 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 1474 OF 2021

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

— Vs. —

RESPONDENTS : 1. Sanjay Daulatrao Lonkare
aged 45 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 3971 OF 2022

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

___ Vs. ___

RESPONDENTS : 1. Sheikh Mukhtyar Mohammad Shafi
aged 36 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 1597 OF 2021

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

___ Vs. ___

RESPONDENTS : 1. Naresh Sahdeo Charbhe
aged 45 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 3986 OF 2022

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

— Vs. —

RESPONDENTS : 1. Bhimrao Sahadeo Jangle,
aged 40 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

AND

WRIT PETITION NO. 2639 OF 2022

PETITIONER : Gimatex Industries Private Limited
Wani, Tah. Hinganghat, District Wardha,
through its Manager.

— Vs. —

RESPONDENTS : 1. Kishor Vitthal Mathankar
aged 40 years, Occ. Nil,
Shivaji Ward, Hinganghat, Tah. Hinganghat,
District Wardha.

2. The Labour Court, Wardha,
District Wardha

3. The Hon'ble Member,
Industrial Court, Civil Lines, Nagpur.

Corrected as per
Court's Order
dated 10/10/2022
passed on CAW
No. 2246/2022.

Shri D.M. Kakani, Advocate for petitioner
Shri D.S. Lambat and Shri A.G.Lambat, Advocates for respondent no.1
Miss. H.N.Jaipurkar, AGP for respondent Nos. 2 and 3/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 30/09/2022

Common Judgment (Oral)

1. Heard Shri Kakani, learned counsel for appellant and Shri Lambat learned counsel for the respondent no.1. The respondent nos.2 and 3 are formal parties.

Heard finally by consent of the learned counsel appearing for the parties.

2. The writ petitions challenge the judgment dated 5/8/2017 passed by the learned Labour Court, Wardha in Complaint ULP No.9/2009 dated 05/08/2017, whereby the complaint has been partly allowed and the order dated 31/5/2007 whereby the termination of the respondent w.e.f. 1/6/2007 was declared as being an unfair labour practice and the appellant was directed to reinstate the respondent and the order dated 31/5/2007 was declared as illegal and modified

by imposing a punishment of stoppage of one year increment. The judgment further directed the payment of back wages from 1/6/2007 to the respondent (pg.48). This judgment was challenged in revision by the appellant in which by the order dated 7/3/2020 the judgment of the learned labour court was maintained, however, the back wages were reduced to 50% (pg.92). It is this grant of 50% back wages w.e.f. 1/6/2007 which is being questioned by Shri Kakani, learned counsel for the petitioner in the present petition.

3. It is not in dispute that pursuance to the filing of the petition the respondent stands reinstated on 18/8/2022 and Shri Lambat counsel for respondent no.1 has no grievance in the regard.

4. Advocate Kakani submits that the order of the learned Industrial Court directing payment of 50% back wages w.e.f. 1/6/2007 is legally unsustainable in law for the reason that the respondent has not tendered any services for this duration and grant of 50% back wages would clearly amount

to rewarding the respondent, though his dismissal has been set aside. He submits that considering the charges which were levied against the respondent (pg.93) the same would indicate the seriousness of the charges as they indicate not only insubordination but the fact that such insubordination was intentional and also levelling of false allegations against the management, all of which have been proved in the enquiry. It is contended that both the courts below have merely set aside the order of dismissal on the ground that the respondent was guilty of absenteeism alone without taking into consideration the other charges which were levelled against the respondent as indicated above for which he invites my attention to para 13 (pg.67) of the order in revision and para 23 (pg.40) of the judgment of the learned labour Court. He further invites my attention to the findings rendered by the learned labour Court on issue nos.1 and 2 which indicated that the enquiry conducted against the respondent was legal and on following the principles of natural justice and so also that the findings by the enquiry officer were correct (para9/pg.31).

5. He further submits that the only ground on which the learned labour court has granted full back wages is to be found in para 35 and 36 and that too based upon a mere statement that from 1/6/2007 the respondent was not having any income. He further invites my attention to the judgment of the revisional Court (para 47/pg.85) in which the learned Industrial Court has recorded that no cogent reasons were given by the Labour Court for ordering back wages and that too when, finding was rendered that the enquiry was not vitiated and was held to be fair and proper and the findings were held to be correct and only the punishment was found to be unreasonable and therefore modified.

6. Relying upon *J.K. Synthetics Ltd. Vs. K.P. Agrawal 2007 (2) SCC 433* it is contended that where the reinstatement is a consequence of imposition of a lesser punishment neither back wages nor continuity of service nor consequential benefits follow as a natural or necessary consequence of such reinstatement, which view has been

reiterated in *Om Pal Singh Vs. Disciplinary Authority Civil Appeal NO.176/2020 decided on 14/1/2020*. It is further submitted relying upon *Dipali Surwase...Vs...Kranti Junior Adhyapak Mahavidyalaya* that J.K. Synthetics (supra) has been followed except to the extent of continuity of service. Reliance is also placed on *Shankar Gowekar Vs. Divisional Transport Officer, 2022 (5) Mh.L.J. 351* in which the refusal of the Labour Court to grant back wages has been upheld (para.10). Reliance is also placed on *Namdeo Vs. District Central Cooperative Bank WP No.8314/2011 and other connected matters, decided on 2/4/2014* (para 11 and 20). It is therefore submitted that the judgment of the learned industrial Court which grants 50% back wages considering the nature of charges as against the respondent (pg.93), which have not been interfered by both the Courts below, was not justified, and which was so also for the reason that the respondent not having rendered any service to the petitioner for the aforesaid duration, which was of the making of the respondent alone in light of the findings regarding the enquiry and charges having not been interfered with except for the

quantum of punishment, the grant of 50% back wages were not justified.

7. Shri Lambat, learned counsel for the respondent no.1 submits that the judgment of the learned Industrial Court granting 50% back wages is correct and proper. He invites my attention to the judgment of the learned Industrial Court and specifically paras 31, 33, 34 (pg 69 to 70) to contend that the punishment of dismissal was not only harsh, but undesirable and uncalled for and was the result of resentment of the employees against the management when they found it difficult to resume duties on account of strike and even on the interim direction of the Industrial Court in Complaint (ULP) No. 149/2005, directing the employer to provide work to the complainant and the complaint subsequently before the Industrial Court dated 24.3.2006 regarding the employer not providing work and seeking the striking off of the defence of the employer (para 21, pg 62). He submits that it is another matter altogether, that this Complaint (ULP) No. 149/2005 came to be subsequently dismissed by the learned Industrial

Court by the order dated 8.4.2013, however, this according to him clearly indicates the conduct of the management, that in spite of the interim order of the learned Industrial Court, dated 3.2.2006, the management was not willing to join the employee in the services, till 13.1.2007, after which they were dismissed on 31.5.2007. He therefore submits that throughout the employee was willing to render services, however, on account of the illegal dismissal, the employee was prevented from doing so. Regarding the entitlement of the employee for back wages, he places reliance upon **Deepali Surwase (2013) 10 SCC 324**, (para 38, 38.3, 38.4), in which case of **J.K. Synthetics**, relied upon by Mr. Kakani, learned counsel for the appellant, has also been considered; **Mavji C Lakum vrs. Central Bank of India, (2008) 12 SCC 726** (paras 23 and 27) is also relied upon in support of the above contention (on facts); and **MSRTC vrs Sultana Parveen 2014 (7) ALL MR 10** (paras 14), in which it has been held that absenteeism if it was not willful, then the grant of 50% back wages was justified.

8. In **Deepali Surwase** (supra) which also considers

J.K Synthetic (supra), the propositions from the various judicial pronouncements on the matter have been culled out as under:

“33. In *Novartis India Limited vrs. State of West Bengal* (supra), the services of the workman were terminated on the charge of not joining the place of transfer. The Labour Court quashed the termination of services on the ground of violation of the rules of natural justice and passed an award of reinstatement of the workman with back wages. The learned Single Judge of the High Court dismissed the writ petition filed by the appellant but the letters patent appeal was allowed by the Division Bench on the ground that the State of West Bengal was not the appropriate Government for making the reference. The special leave petition filed by the workman was allowed by this Court and the Division Bench of the High Court was asked to decide the letters patent appeal on merits. In the second round, the Division Bench dismissed the appeal. This Court referred to shift in the approach regarding payment of back wages and observed:

“21. There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination *inter alia* on the premise that the burden to show that the workman was gainfully employed during *interregnum* period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and

whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right.”

9. It is thus apparent that grant of back wages in case of wrongful or illegal termination, would be the normal rule, depending upon various factors, such as length of service, the nature of misconduct, the financial conditions of the employer and other similar factors, and so also the averment that during the period of non-employment, the employee was not gainfully employed or was employed on lesser wages. The position is different where the dismissal is set aside only on the ground that the punishment imposed was disproportionate, at the same time holding that the misconduct was proved.

10. In the instant case, it is not in dispute that both the Courts below have held against the employee regarding

the findings on the point of misconduct, and has set aside the dismissal only on the ground that it was disproportionate, which has attained finality, as there is no challenge to the same. Therefore, the only question involved is regarding the quantum of back wages awarded by the learned Industrial Court, which are to the extent of 50% of the back wages.

11. The charges at page 93 indicate that the dismissal of the employees was not only for absenteeism, but also for non compliance with the orders given by the higher authorities from time to time; intentional violation of the standing orders; levelling false allegations against the officers in the management and acting in a manner which was unbecoming of the employee in the course of his employment. All these misconducts have been proved by the employer, which has resulted in dismissal. Therefore, absenteeism alone was not the reason for the dismissal.

12. The learned Industrial Court in its impugned judgment (para 30, pg 68) has observed that, at a given point

of time when the employer had agreed to comply with the interim order of resumption by the learned Industrial Court, the employees and their colleagues workmen began showing their adamancy and were trying to dictate their terms of working. It has been further observed that such conduct which was in breach of the practices and rules of the employer industry was not justified. At the same time it has also been held that this could have been avoided, had the employer/petitioner relented a bit and acted with maturity.

13. It therefore appears that though the employees were at fault, the conduct of the employer was also not of such a nature so as to diffuse the situation in the larger interest of the working of the industry. The Hon'ble Apex Court in **Deepali Surwase** has indicated that in case the enquiry against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but the punishment was disproportionate to the misconduct found proved, then the Court will have discretion not to award full back wages and the question of award of back wages to

any extent from 0 to 100 percent would depend upon the facts of each case, based upon which the discretion of the Court has to be exercised. The learned Industrial Court, as indicated above, has noted the stand taken by both the parties, and arrived at the decision to pay 50% back wages to the employees from 1.6.2007. However, that appears to be upon a consideration of the misconduct on account of absenteeism as is indicated from the observations in para 38 and the acts of the employees of misdemeanor have been tried to be justified on the ground that they were the result of their resentment against the management on account of their difficulties to resume duties after withdrawal of the strike and even after the interim direction by the learned Industrial Court. The specific charges as enumerated in the charge sheet (pg 93) do not appear to have been taken into consideration and adverted to.

14. In **J.K. Synthetic** (supra) which has been considered in **Deepali Surwase** (supra), the Hon'ble Apex Court has held that in cases where the misconduct is held to have been proved and reinstatement is itself a consequential

benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee had not worked may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct by the employee, which should be avoided. The two exceptions to this rule, as enumerated therein, are not attracted in the present matter. It has also been held that the seriousness of the misconduct, which was proved, also ought not to be ignored. In such circumstances, it would be appropriate, that the rival contentions, are balanced and lump sum amount is awarded for the reasons that from 2007 till 2022, the Respondents have not rendered services to the petitioner, at the same time it has come on record that they are not gainfully employed.

15. Mr. Kakani, learned counsel for the petitioner has tendered across the bar a chart indicating what would be the 50% back wages which the Respondents are entitled to receive as per the order of the learned Industrial Court, which is taken on record and marked as “X” for the purpose of

identification. Mr. Lambat, learned counsel for the respondents does not dispute the correctness of the figures, which are till 8.6.2018. These figures, vary from ₹.3,68,393/- to ₹.4,18,515/-. In my considered opinion, since I have come to the conclusion that a lump sum amount would be the appropriate course of action, the judgment of the learned Industrial Court, insofar as it relates to 50% back wages is hereby modified and it is directed that the petitioner shall pay a lump sum amount of Rs. 3,25,000/- to each of the respondents, as full and final satisfaction of their claims, regarding the back wages.

16. The petitions are accordingly partly allowed to the above extent. Since the amount already stands deposited before the learned Industrial Court, the respondents shall be permitted to withdraw the same immediately, to the extent indicated above. The balance remaining shall be withdrawn by the petitioner. Insofar as the rest of the reliefs which have been granted by the learned Courts below Mr. Kakani, learned counsel for the petitioner does not press for that.

JUDGE

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