

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3115 OF 2019

The Sahakar Maharshi Swargiya
Bapuraoji Deshmukh Sutgirni Ltd.,
Wardha, through its President
Sandeep S/o. Sureshrao Deshmukh
Aged about 35 years, Occ.: Agriculturist,
R/o. Vaishali Nagar, Wardha,
Tahsil and District : Wardha.

.... **PETITIONER.**

// **VERSUS** //

Janardhan S/o. Hiranmanji Karwatkar,
Aged about 53 years, Occupation: Service,
R/o. C/o. Shri Deotale Guruji,
Behind Agrawal Kirana Stores,
Sindhi (Railway), Tahsil : Seloo,
District : Wardha.

.... **RESPONDENT.**

Shri S.K.Bhoyar, Advocate for Petitioner.
Shri A.J.Salway, Advocate for Respondent.

CORAM : ROHIT B. DEO, J.
DATED : JANUARY 10, 2022.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith.
3. With the consent of the learned counsel appearing for the parties, the petition is heard finally at the admission stage.

4. Petitioner-The Sahakar Maharshi Swargiya Bapuraoji Deshukh Sutgirni Ltd., Wardha (“employer” for short) is assailing the judgment dated 06/01/2014 rendered by Labour Court, Wardha in Complaint (ULP) No. 29 of 2011, whereby the termination of respondent-Janardhan Hiranmanji Karwatkar (“employee” for short) is held an unfair labour practice and the employer is directed to reinstate the employee with back wages and continuity in service. The employer challenged the judgment of the Labour Court in Revision (ULP) No.79 of 2014, which the Industrial Court dismissed vide judgment dated 06/09/2018.

5. The employer is invoking writ jurisdiction assailing the concurrent view of the Labour Court and the Industrial Court.

6. Mr. S.K.Bhoyar, who appears on behalf of the employer, would submit that a relief which is not claimed is granted by the Labour Court.

7. I found some difficulty in understanding what Mr.Bhoyar was attempting to put across. Mr.Bhoyar then elaborated that the prayer clause of the complaint makes no reference to back wages. The submission of Mr.Bhoyar that a relief, which is not claimed, is granted by the Labour Court is noted only as a courtesy to the counsel. The employee has sought a declaration that the termination is an unfair labour practice and a further direction to the employer to cease and desist from committing the unfair

labour practice is prayed. Implicit in the relief prayed, the nature of the proceedings and the power of the Labour Court, is a direction to grant back wages if the termination is found illegal, as has been done by the Labour Court in the present case.

8. Mr.Bhoyar would then argue that the finding recorded by the Labour Court that the misconduct is not proved, is illegal. This submission is equally substanceless.

9. The misconduct alleged vide charge-sheet dated 22/09/2010 was that the employee was absent since 08/06/2010 without any intimation. The case of the employee was that he could not attend duty due to ill-health and he did prefer an application for leave on 10/06/2010. The employer purported to conduct an enquiry. The charge was held proved and the employee dismissed. The Labour Court found the enquiry unfair and gave an opportunity to the employer to prove the misconduct. The opportunity was not availed. The employer did not adduce any evidence to prove the misconduct. Be it noted that the absence per se has never been treated or recognized as a misconduct much less a serious misconduct. While, the employer did allege unauthorized absence, the employee had a counter narrative which is that he was not well and did submit an application for leave. The initial burden was therefore, of the employer to show that the employee is guilty of misconduct within the ambit of the standing orders. I

see no error in the finding recorded by the Labour Court that the employer did not prove the misconduct.

10. Assuming *arguendo* that the employee did commit some mistake, the further finding of the Labour Court is that the punishment of dismissal is shockingly disproportionate to the alleged misconduct. Again, the said finding is unexceptionable.

11. The finding of the Labour Court is upheld by the Revisional Court and the reasons, which are recorded, are sound. It is not for the writ Court to re-appreciate all the aspects as if sitting in appeal. The jurisdiction exercised by the Industrial Court under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was in itself a restricted jurisdiction and the High Court cannot, in any event, in exercise of jurisdiction under Article 227 of the Constitution of India enter into a minute evaluation of the material and the findings.

12. The final submission of Mr.Bhoyar that there is no pleading or proof that the employee was not gainfully employed is contrary to the record. In paragraph 14 of the complaint, the employee has pleaded that since the date of the dismissal he has not secured any job. The employee did examine himself and reiterated that he is not in gainful employment since the dismissal. Indubitably, this pleading and evidence is sufficient to discharge

the initial burden, particularly since the employer has not entered the witness box to state on oath to the contrary.

13. No case is made out for interference with the concurrent orders in exercise of writ jurisdiction and the petition is **dismissed** with no order as to costs.

(ROHIT B. DEO, J)

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