

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

WRIT PETITION NO. 6756 OF 2017

1. Zilla Prishad, Nagpur
through its Chief Executive Officer,
District Nagpur.
2. The Medical Officer,
Primary Health Centre of Nagardhan,
District Nagpur

...PETITIONERS

---VERSUS---

Pandurang Chinduji Ghathe
Since dead through his legal heirs

1. Smt. Lata Wd/o Pandurang Gathe
Aged about 60 years,
2. Ajay S/o Pandurang Gathe
Aged about 39 years
3. Sanjay s/o Pandurang Gathe
Aged about 32 years
All Nos.1 to 3 R/o Bela, Tah. Umrer
Dist. Nagpur

...RESPONDENTS

Shri V.D. Raut, Advocate for the petitioners.
Shri V.P. Marpakwar, Advocate for respondents.

CORAM : AMIT BORKAR, J.
DATED : AUGUST 24, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith by consent of the parties.

2. By the order impugned in the present petition is passed by the Industrial Court dismissing revision filed by the petitioners confirming the order of Labour Court directed reinstatement of the original complainant along with full back-wages with continuity of service.

3. The facts relevant for the adjudications are as under:

(a) The original complainant/respondent-employee was appointed to the post of Vaccinator/Health Worker under Maharashtra Zilla Parishad District Services, Recruitment Rules and posted at Public Health Center, Nagardhan, District Nagpur. The original complainant was appointed in the year 1974 and was made permanent in the year 1976. On 15th January 1990, the original complainant was suspended pending enquiry on the allegation of commission of misconduct. On 29th December 1990, a charge sheet was issued to the employee. On 18th November 1991, the petitioner, after holding an enquiry, passed an order of dismissal of the respondent's service.

(b) On 26th December 1991, the respondent filed Complaint (ULP) no.1002 of 1991, challenging the dismissal of the order dated 18th November 1991. On 18th February 2008, the Labour Court set aside the enquiry proceedings and report of the enquiry

officer and granted permission to the petitioner to prove the respondent's misconduct before it. The petitioner recorded evidence in the said complaint. On 10th November 2009, the Labour Court allowed Complaint (ULP) No.1002 of 1991, directing reinstatement of original complainant/respondent with full back-wages with continuity in service. Aggrieved thereby, the petitioner filed ULP Revision No.14 of 2010, both challenging orders dated 18th February 2008 (order on the preliminary issue) and 10th November 2009, the final order passed by the Labour Court. By order dated 11th August 2011, the legal representatives of the respondent were brought on record as the respondent expired. The Industrial Court, by order dated 8th July 2016, dismissed the revision. Hence, petitioners have filed the present petition.

4. Shri V.D. Raut, learned Advocate for petitioners, submitted that the findings recorded by the Courts below are perverse. He submitted that scope of enquiry once the enquiry officer submits the enquiry report is microscopic, and the Courts below were not justified in setting aside the enquiry report. He submitted that the charges levelled against the original complainant/respondent were serious in nature. Therefore, the Labour Court was not justified in holding that the enquiry was

improper. Finally, he submitted that in the absence of a statement in the complaint or affidavit by the complainant that he was not gainfully employed after termination till the order of reinstatement, the direction to pay full back wages is contrary to the law laid down by the Apex Court. He, therefore, prayed for setting aside the impugned order.

5. *Per contra*, Shri V.P. Marpakwar learned Advocate for respondent-employee submitted that while answering the preliminary issue, the Labour Court recorded a finding that the departmental enquiry was not fair, legal and proper. The opportunity was granted to the petitioners to prove misconduct before the Labour Court, which the petitioners have failed to prove. He submitted that the Labour Court had recorded a finding that the termination of the respondent was in breach of principles of natural justice. He also invited my attention to the finding recorded by the Industrial Court that services of the respondent are terminated without providing the opportunity of a personal hearing, which amounts to victimization and colourable exercise of employer power. He, therefore, submitted that the respondent's case is covered by clause 33.5 of the Apex Court's judgment in the **Deepali Gundu Surwase Vs case. Kranit Junior Adhyapak**

Mahavidyalaya (D.Ed) and others¹. He, therefore, submitted that no inference is called for in the impugned orders.

6. Having reflected on the submissions made by both sides, undisputedly, the respondent had been appointed to the post of Vaccinator/Health Worker in 1974 after following due procedure. Thereafter he was made permanent. The enquiry was initiated in the year 1990. The Labour Court, while recording the finding on the preliminary issue, held an enquiry to be unfair and illegal. The petitioners had the opportunity to prove misconduct under Section 11A of the Industrial Disputes Act, 1947, before the Labour Court. The petitioners failed to adduce evidence to prove the respondent's misconduct under Section 11A of the Industrial Disputes Act. With a result, a charge of misconduct has not been proved against the respondent. If that be so, the petitioners could have terminated the respondent's service. The Industrial Court, based on evidence on record, recorded the finding that the employer did not provide the sufficient opportunity of hearing to the respondent and inflicted punishment without providing the opportunity of hearing which amounts to victimization. On perusal of the record, I do not find any perversity in the findings recorded by the Industrial Court.

¹ 2014(2) MhLJ 480

7. Since the respondent was appointed after following due procedure on the sanctioned post and was made permanent in the year 1976, and was working till 1990, the Courts below were justified in directing reinstatement of the respondent.

8. Insofar as a grant of full back-wages is concerned, undisputedly, there is no averment in the complaint that the respondent was not gainfully employed anywhere after termination till the order of reinstatement. Learned Advocate for the respondent invited my attention to paragraph 33 (v) of the judgment in the case of **Deepali** (supra). The said paragraph reads as under:

“33.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must

always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”

9. In the present case, the Industrial Court has recorded a finding of a violation of principles of natural justice and victimization. The Single Judge of this Court had to consider a similar situation where the employee failed to make an averment that he was not gainfully employed after the termination date. After considering the law laid down by the Apex Court in earlier judgments, the Single Judge of this Court held that the petitioner should be entitled to 50% of back-wages. In the facts of the present case, the respondent was appointed after following due process on the sanctioned post in the year 1974 and working till 1990. The respondent immediately approached Labour Court. The Labour Court directed payment of full back wages, which the Industrial Court confirmed. Therefore, in my opinion, the respondent shall be entitled to 50% of back wages as granted by the Single Judge of this Court in the case of **Lady Yashodabai Joshi Ladies Club, through its Secretary and another Vs. Mrudula**

Govindrao Kavishwar and another¹. In that view of the matter, I pass the following order:

- i. The order of reinstatement of the respondent is confirmed.
- ii. Insofar as the order of back-wages is concerned, the order of full back-wages is modified to the extent of 50%.
- iii. The rest of the order passed by the Labour Court and confirmed by the Industrial Court is hereby maintained.

Rule is made absolute in the above terms. No costs. Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh

¹ 2022 SCC OnLine Bom 1665