

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.3761 OF 2009
WITH CIVIL APPLICATION NO.6873 OF 2023
IN WP/3761/2009**

The Manager,
Osmanabad Janta Sahakari
Bank Ltd., Osmanabad.
Tq. and Dist. Osmanabad

... Petitioner

Versus

Shrihari Dattatraya Lomate,
Age : 52 years, Occu : Nil,
R/o. Salgara (Divti),
Tq. Tuljapur, Dist. Osmanabad.

... Respondent

...

Advocate for Petitioner : Mr. Vivek Dhage
Advocate for Respondent : Mr. A.V. Patil

...

**WITH
WRIT PETITION NO.4069 OF 2009**

Shrihari Dattatraya Lomte,
Age : 52 years, Occu : Nil,
R/o. Salgara (Divti),
Tq. Tuljapur, Dist. Osmanabad.

... Petitioner

Versus

The Manager,
Osmanabad Janta Sahakari
Bank Ltd., Osmanabad.
Tq. and Dist. Osmanabad

... Respondent

...

Advocate for Petitioner : Mr. A.V. Patil
Advocate for Respondent: Mr. Vivek Dhage

...

**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 26th JULY, 2023**

ORAL JUDGMENT :

1. Both these petitions raise similar question of law and

facts. Hence, they are heard together and decided by this common judgment.

2. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

3. Writ Petition No.3761/2009 is filed by the Bank challenging order dated 10/02/2009, passed by learned Presiding Officer for Industrial Disputes Act and Judge, Labour Court, Latur, in I.D.A. No.05/2005, thereby allowing application of the respondent employee and directing the Bank to pay him amount of Rs.65,047/- towards bonus and ex gratia payment with 12% interest from the date of application till it's realization.

4. In Writ Petition No.4069/2009, the employee has challenged the said order to the extent of interest part, claiming that he is entitled for the interest from the date on which said amount became due to him and not from the date of application. For the sake of convenience the litigating parties are referred to as the 'Bank' and the 'employee'.

5. Heard learned advocate for the Bank and learned advocate for the employee. Perused the memo of writ petitions, annexures thereto and the impugned order.

6. Learned advocate for Bank submits that the Labour

Court has erred in allowing application filed by the employee, ignoring the fact that employee was suspended from duties on 30/09/2000 and thereafter, after holding inquiry he was dismissed from service by order dated 21/12/2001. Since his misconduct is proved and he is dismissed from service, he is not entitled for bonus and ex gratia payment. The contention raised in written statement that, there is a resolution of the Bank that employee who is suspended for misconduct or the employee who is dismissed from service, such employee is not entitled to the benefit of bonus and ex gratia payment, is ignored by the Labour court. He further submits that Labour Court has recorded perverse findings and has erroneously allowed the application filed by the employee and therefore, the impugned order is liable to be quashed and set aside. In support of his submissions, he relied on *The Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal, AIR 1994 SC 552*.

7. Learned advocate for employee, on the other hand, supported the impugned order. He submits that the dismissal order of employee is set aside by the Labour Court, Latur, in Complaint (ULP) No.142/2004, by order dated 16/12/2010 and he was directed to be reinstated in service with continuity in service and full back wages with all service benefits. The said order is confirmed by the Industrial Court, Latur, in Revision (ULP) No.03/2011.

Thereafter, the Bank challenged the said order by filing Writ Petition No.9300/2011, before this Court. This Court modified the order of Labour Court by awarding 50% back wages instead of 100% and the order passed by this Court is confirmed by the Hon'ble Supreme Court. In that view of the matter, he submits that nothing survives in the writ petition filed by the Bank as the main ground of challenge is not available to the Bank. Hence, the petition be dismissed.

8. Admittedly, the main ground of challenge of the Bank is that, since employee is dismissed for proved misconduct, he is not entitled for bonus and ex-gratia payment. The Bank has filed the petition on 04/05/2009, when the employee was under suspension. Thereafter, the employee was dismissed from service on 21/12/2001, after holding departmental inquiry. From the orders placed on record by the learned advocate for employee, it is clear that Labour Court has allowed Complaint (ULP) No.142/2004, filed by the employee, and set aside his dismissal order and directed the Bank to reinstate him in service with continuity in service and full back wages with all service benefits. This order is confirmed by this Court in Writ Petition No.9300/2011, with only modification that instead of 100% back wages the employee was held entitled for 50% back wages. Admittedly, this order is confirmed by the Hon'ble Supreme Court.

9. In this view of the matter, since dismissal of the employee is set aside and he is granted reinstatement in service with continuity in service and full back wages, with all service benefits, he is entitled for bonus and ex-gratia payment, which is awarded by the Labour Court. In view of the orders passed in favour of the employee, main ground of challenge of the Bank does not survive.

10. In *The Management of Reserve Bank of India* (supra), the Supreme Court was considering Regulation 46 of the Reserve Bank of India (Staff) Regulations, 1948, in respect of the employee arrested for criminal offence, who was subsequently acquitted. In these facts, it was held that employee does not automatically become entitled to full pay and allowances for suspension period. Discretion in that matter is rested exclusively in Bank and that power is unassailable. In these facts, it was held that, "*the Labour Court while acting under Section 33-C(2) of the Act had no jurisdiction to decide the question whether an employee who is suspended is entitled to his pay and allowances or not and to what extent*". This judgment can be distinguished on facts and is not applicable to the facts of the present case.

11. Such are not the facts of the present case. In the present case, employee has claimed the bonus and ex-gratia payment of the period prior to the date of his suspension. The

employee was suspended with effect from 30/09/2000. He has claimed bonus and ex-gratia payment of the period from 01/04/1999 to 30/09/2000. Therefore, the said ruling is not applicable to the facts of the present case. There is no merit in the contention of the Bank that the Labour Court had no jurisdiction to entertain the application filed by employee under Section 33C(2).

12. Labour Court has passed well reasoned order, which is not liable to be interfered with in exercise of extraordinary writ jurisdiction. In the facts of the present case, Labour Court is justified in awarding interest from the date of application.

13. No case is made out by the employee for grant of interest from the date on which the sums payable to him became due. There is no merit in the challenge raised in both these petitions. Writ petitions being devoid of merit are dismissed. Rule is discharged.

14. In the present matter, bank has deposited amount of Rs.1,13,501/-, out of which the employee was permitted to withdraw Rs.65,000/- and remaining amount is kept in the Fixed Deposit. The amount kept in the Fixed Deposit be paid to the employee, along with the accrued interest.

15. Accordingly, civil application stands disposed of.

(NITIN B. SURYAWANSHI, J.)