

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 588 OF 2017

Bhagwan s/o Pandarinath Patil,
Age: 60 years, Occupation: Nil,
Residing at Mohadi, Taluka Jamner,
District Jalgaon.

... Petitioner
(Orig. Accused)

Versus

1. The Chief Executive Officer,
Jalgaon Jilha Dekhreh Sahakari
Sanstha Maryadit, Jalgaon,
Having its office located at
Ganesh Colony, Jalgaon.
2. The State of Maharashtra
Through the Secretary to the Government,
Cooperation Department,
Mantralaya, Mumbai.

... Respondents
(Orig. Complainant)

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Mr. Hemant Surve & Mr. Kshitij Surve, Advocate for Petitioner.
Ms. Seema Gaikwad, h/f Mr. Ajay Talhar, Advocate for Respondent No.1.
Mr. S. N. Morampalle, APP for Respondent No.2.

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CORAM : **SANJAY A. DESHMUKH, J.**
RESERVED ON : 07th September, 2023.
PRONOUNCED ON : 10th November, 2023.

J U D G M E N T :

1 Rule. Rule made returnable forthwith and heard finally by

the consent of the parties.

2 The short issue involved in the present petition is as to whether the employer is justified in denying the back-wages to the petitioner on the principle of “no work no pay”, when the employee was acquitted and reinstated from the criminal charges and departmental enquiries.

3 The petitioner was serving with respondent No.1 (Jillha Dekhreh Sahakari Sanstha Maryadit, Jalgaon) as Block Secretary since 1979. It is alleged that he misappropriated an amount of Rs.1400/- and therefore, he was prosecuted. It was also alleged that he remained absent from 5th January, 1991 on his duties. It was also alleged that he did not reply to the notices about his leave record and medical certificate etc.. He was, therefore, terminated by the respondent No.1 on 31st May, 1995. By judgment dated 23rd September, 2003 passed in Regular Criminal Case No.101 of 1992, the learned Judicial Magistrate First Class, Jamner acquitted the petitioner. However, the petitioner was thereafter, terminated after the departmental enquiry.

4 The petitioner filed an appeal before the learned Divisional Joint Registrar, Cooperative Societies, Nashik Division Nashik. The same was dismissed on the ground that there was delay of 8 years for filing the appeal. It was dismissed. Against that, the petitioner filed revision before the Honourable Minister (Co-operation), Mumbai bearing

No.467 of 2010. Again there was delay of 3 years for filing it. He prayed before the Honourable Minister to condone the delay and reinstate him.

5 The Honourable Minister held that the petitioner is acquitted from the criminal charges and therefore, he is entitled for reinstatement from 31st December, 1996 and his service was held continued, however, it is clarified that he is not entitled for back-wages.

6 The grounds of objections raised by the petitioner in his petition are that, the Honourable Minister failed to decide that the petitioner was not gainfully employed after the order of termination. The reasons are not given in the order as to why back-wages are not given in the impugned order. It was not considered that the petitioner gained the age of superannuation without any service benefits. The Honourable Minister failed to consider that the petitioner was not guilty of the alleged misconduct and therefore, he is entitled for back-wages. The impugned order is illegal and not sustainable. It is lastly prayed to set aside the impugned order with direction to pay back-wages to the petitioner with interest.

7 By way of affidavit-in-reply on behalf of respondent No.1, the petition is strongly opposed. It is urged that this petition is not maintainable. The criminal proceedings and the departmental enquiry are different proceedings and the petitioner was held liable under the departmental enquiry. He was held liable in departmental enquiry for

four charges and lastly terminated. The petitioner was involved in serious crime of embezzlement of an amount of Rs.1400/- and criminal breach of trust. The petitioner did not prove that he was not gainfully employed after the termination. Therefore, he is not entitled for back-wages. It is lastly prayed to dismiss the writ petition.

8 The learned counsel for the petitioner submitted that the impugned order passed in the revision by the Honourable Minister lacks reason as to why the petitioner is not entitled for back-wages. It is directly held in the final order that the petitioner is not entitled for back-wages without giving reasons. He, therefore, prayed to set aside the impugned order and give directions for back-wages with interest.

9 The learned counsel for petitioner submitted that though the respondent urged the ground that the writ petition is not maintainable, in fact, the writ petition is maintainable in view of the judgment of the Honourable Supreme Court in case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, 2014 (2) Mah.L.J. (S.C.) 480.*** He lastly prayed to allow the writ petition.

10 The learned counsel for respondent No.1 and the learned AGP for respondent No.2 submitted that the petitioner was departmentally held liable for embezzlement and criminal breach of trust. Therefore, he cannot claim back-wages. The petitioner did not establish that he was not in gainful employment after the order of termination. It is

lastly prayed to dismiss the writ petition.

11 As far as maintainability of the writ petition is concerned, the Honourable Supreme Court in case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others** (supra) held that writ petition against the wrongful termination of service, as well as, reinstatement with back-wages is maintainable, if it is established that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice.

12 The reasons are not given in the impugned order by the Honourable Minister as to why the petitioner is not entitled for back-wages. Thus, said decision is against the principles of natural justice, which cause serious prejudices to the petitioner.

13 As far as the issue of gainful employment is concerned, initial burden lies upon the employer to show that the petitioner was gainfully employed after the order of termination. There is no such specific assertion on the part of respondent No.1 that the petitioner was gainfully employed during his termination. Therefore, in view of the recent precedent of the Honourable Supreme Court in case of **Ramesh Chand Vs. Management of Delhi Transport Corporation, (Civil Appeal No.4208 of 2023 arising out of SLP (Civil) No.7137 of 2016)** and the facts and circumstances of this case, the petitioner is entitled for back-wages.

14 The delay of 8 years, as well as, 3 years for proceeding against the departmental enquiry is considered and condoned by the authority and the petitioner is exonerated from the departmental enquiry and reinstated by the impugned order. Considering these aspects, there is absolutely no reason to deprive the petitioner from granting back-wages, excluding the period of delay caused by him for two times i.e. 8 years and 3 years.

15 Considering the reasons discussed above, the petitioner is entitled for back-wages, excluding the eight and three years period of delay, for which the petitioner is not entitled for back-wages. In the interest of justice, the petitioner is also entitled for 6% simple interest on the entire amount of back-wages till its realization. The petition, therefore, deserves to be partly allowed.

16 For the reasons discussed above, the arguments of the learned counsel for respondent No.1 and learned AGP for respondent No.2 is not acceptable. Therefore, following order:

ORDER

The writ petition is partly allowed as under:

- i. Respondent No.1 is directed to pay back-wages from the date of termination of the petitioner till his attaining the age of superannuation, excluding the 11 years period of delay caused for filing the appeal / proceedings against his termination within three months.

- ii. The petitioner is entitled for 6% simple interest on back-wages on the said amount till its realization.
- iii. The writ petition is disposed off accordingly. No costs.
- iv. Rule is made absolute in above terms.

[SANJAY A. DESHMUKH, J.]

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