

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13476 OF 2019

Shri Sai Arihant Nagari Sahakari
Patsanstha Maryadit, Shirdi
Through its Manager
and others

.... Petitioners

Versus

Lalitkumar Deepchand Parakh

.... Respondent

.....
Mr. Parag V. Barde, Advocate for Petitioners
Mr. Shivaji T. Shelke, Advocate for the Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th JULY, 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India, challenges the order passed by the Labour Court in Complaint (ULP) No.80 of 1999 and the order passed by the Industrial Court in Revision (ULP) No.43 of 2014.

2. Facts in brief, which are not in dispute are that, respondent joined services of petitioner on 16/06/1995 as Clerk. Services of the respondent were terminated by order dated 19/06/1999. The termination order is challenged by the respondent by filing complaint under Section 28(1) read with

Schedule IV, Item-1(a), (b), (C), (d), (e), (f) and (g) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws, 1971 (for short, M.R.T.U. and P.U.L.P. Act). After recording of evidence and hearing the parties, the Labour Court allowed the complaint holding that, the petitioner is engaged in unfair labour practices under Schedule IV, Item-1, Clause (a), (b), (C), (d), (e), (f) and (g) of M.R.T.U. and P.U.L.P. Act. It is also declared that the impugned termination order is unjust, arbitrary and illegal and the same is quashed and set aside. Thus, reinstatement of the respondent with effect from 18/06/1999 with benefits of continuity of services and 25% back wages was allowed. The respondent was held entitled for all consequential benefits.

3. Being aggrieved by the Labour Court's order, the petitioner filed Revision (ULP) No.43 of 2014 before the Industrial Court, Ahmednagar. The Industrial Court confirmed the judgment and order of the Labour Court with a minor modification, holding that item 1(a), (b) and (f) are only attracted in the case and that, even if it is presumed that the charge of absenteeism is proved, refusal of 75% back wages for a long period would have been adequate punishment. Therefore, the judgment and order passed by the Labour

Court is maintained. The petitioner is aggrieved by the judgment and order passed by the Labour Court and Industrial Court.

4. Heard the learned advocate for the Petitioners and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto and the impugned orders, and citations relied upon by the learned advocate for the petitioners and the learned advocate for the respondent.

5. Attention of this Court was invited to the order passed by the learned Single Judge of this Court (Coram : Sandeep V. Marne, J.) in Writ Petition No.2502 of 2021 on 14/12/2021, which is passed in similar circumstances. Both the learned advocates for the parties fairly admitted that the said decision is rendered in similar facts situation. The relevant observations in the said order are reproduced hereinbelow:

"8. In writ jurisdiction under Article 227 of the Constitution Of India, this Court would not sit as an appellate authority over the findings so recorded by the Industrial Court and Labour Court. I am therefore of the view that the order passed by the Labour Court and the Industrial Court setting aside the termination order do not suffer from any error and the same are required to be upheld.

9.

10. *What is left now is the issue of reinstatement and back wages. The complainant has been terminated from service on 02.02.2002 and he has been out of employment of petitioner bank for last 20 long years. Even after the Labour Court set aside the reinstatement on 06.03.2014. The petitioner bank failed to reinstate the complainant in service. Even as of today complainant has not been reinstated in service. The Industrial Court has awarded 50% back wages from 02.02.2002 till the date of reinstatement. The intervening period during which the back wages claimed is unduly long of about 20 years.*

11.

ORDER

(i) *The orders passed by the Labour Court and Industrial Court are modified to the extent that petitioner bank shall pay to the respondent employee a lumpsum compensation of Rs.4,00,000/- (Rupees Four Lakhs Only) for the wrongful termination from service. Over and above, the lumpsum compensation as awarded by this Court, the respondent employee shall not be entitled for any benefit from the petitioner bank. The petitioner bank to pay the compensation amount to the respondent employee within a period of two (02) months from today.*

(ii) *With the above directions, the writ petitions are disposed of."*

6. In ***Rangnath S/o Nana Patare and Ors. Vs. The Director Ground Water Survey and Development Agency and Ors., 2016 (7) ALL MR 47***, the learned Single Judge of this Court has observed thus:

" I have considered the above factors with due circumspection and in the light of the judgments of the Apex Court considered by this Court in the matter of State of Maharashtra Vs.Santosh Gorakh Patil, 2015 (3) Mh.L.J. 992. The relevant observations of this court, based on the ratio laid down by the Apex court, are found in paragraph Nos.9 to 15, which read as under :-

31. All the present petitioners are out of employment for the last 23 years. All of them are said to be in their late 50's and are nearing retirement. I find it fruitless to reinstate them in employment. The respondents have not assailed the conclusions drawn by the Labour Court and the Industrial Court to the extent of having established continued service with the respondents and having been terminated from employment on 16/07/1992. However, foisting the petitioners on the respondents is likely to cause more harm than good.

32. As such, quantifying compensation appears to be the most reasonable approach in the light of the above referred judgments of the Apex Court. I am in agreement with the contentions of Mr. Barde that the compensation awarded is extremely meager. Mr. Barde submits that though the petitioners were entitled for gratuity, they have not been paid the said amount. Considering all these factors and the

ratio laid down by the Apex Court, an amount equivalent to Rs.40,000/- per year of service, in my view, would be an appropriate compensation to the petitioners."

7. Considering the fact that, both the Courts have passed well reasoned orders, this Court is not inclined to interfere in the concurrent findings of fact, which are supported by the documents placed on record. However, in the peculiar facts of the present case and in view of the order passed in similar circumstances, and in the light of aforesaid observations, the orders passed by both the Courts below need to be modified. In my view, following order would subserve the ends of justice.

ORDER

- (I) The writ petition is allowed.
- (II) The orders passed by the Labour Court and Industrial Court are modified to the extent that the petitioner shall pay to the respondent 25% arrears of salary from September, 2014 to October, 2018 with consequential monetary benefits, which are calculated at Rs.3,90,862/- + Rs.4,00,000/- towards lumpsum compensation for wrongful termination of service.

- (III) The amount shall be paid to the respondent by demand draft, within a period of eight weeks from the date of receipt of writ of this order.
- (IV) The amount of Rs.21,914/- deposited by the petitioner before the Industrial Court in the year 2014, shall be refunded to the petitioner along with accrued interest.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane