

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 5966 OF 2006
WITH
WRIT PETITION NO. 2924 OF 2007**

Sambhaji Shivaji Patil

....Petitioner

V/s.

Divisional Manager, Maharashtra State

Co-op. Agriculture and Rural

Development Bank Ltd. And Ors.

....Respondents

--

Mr. Prashant Bhavake , for the Petitioner in both the petitions.

Mr. Milind Deshmukh, for Respondent No.1 in both the petitions.

Mr. Sandeep Koregave in WP-5966/2006.

Mr. P.P. Pujari, AGP in both the petitions.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 August 2023.

P.C. :

WRIT PETITION NO. 2924/2007 :

1. By this petition, Petitioner challenges judgment and order dated 24 August 2004 passed by the Industrial Court, Kolhapur rejecting Revision Application (ULP) Nos. 182/1992 and 124/1994. The Revision was filed by the Petitioner challenging judgment and order dated 8 July 1992 passed by the

Judge, Labour Court, Kolhapur to the extent of denial of relief of backwages. Petitioner was terminated from service on/or about 4 January 1989 for the misconduct of remaining unauthorisedly absent. The Labour court proceeded to allow the complaint by judgment and order dated 8 July 1992 and directed Petitioner's reinstatement. However, it denied the relief of backwages by recording following findings :

“In the cross-examination, he has admitted that he reported at Mandangad next day when he received the certificate from Civil Surgeon. It means that on 5 January, 1989 he could not go to Mandangad but he went to Mandangad on 6 Jan, 1989. Even then it appears that the application came to be filed on 5-1-1989 by the Complaint to the office at Ratnagiri wherein he reported to duties. It is, therefore, clear that the said application is got-up one. It further appears from the record that on 5-1-89 one H.D. Patil gave the report regarding joining of the Complainant Patil. This could not have happened but for the Complainant's own showing. It is, therefore, clear that he must have managed to join hands with H.D. Patil who gave the report. The act of the Complainant shows that he is not innocent as he claims to be. This is the main reason why I am not inclined to grant backwages to the Complainant. The act of the Complainant does not fall short of dishonesty. The Complainant wants to take advantage of his own absence and tried to prepare the record so as to suit his purpose. Thus the Complainant has not come to this Court with clean hands.

17. The relief of reinstatement with continuity of service is granted to the Complainant only because the Respondent did not observe the procedure laid down by law while terminating the services of the Complainant. The Complainant does not deserve to get the relief of back wages. The point No.3 is, therefore, answered accordingly.”

2. I have gone through the findings recorded by the Labour Court denying backwages. The Labour Court has arrived at a finding that the termination order was set aside on the ground of non-following of principles of natural justice while terminating Petitioner from service. The Labour Court has also arrived at a conclusion that Petitioner has produced false documents. By considering this conduct, the Labour Court has proceeded to deny backwages while directing Petitioner's reinstatement.

3. In revision, the Industrial Court has once again appreciated Petitioner's demand for grant of backwages and has dismissed the Revision Application. Considering the findings recorded by the Labour Court as well as the Industrial Court for denial of backwages, which do not suffer from the vice of perversity, no case is made out for exercise of jurisdiction under Article 227 of the Constitution of India for reversing the said findings. I therefore do not find any merit in the petition. Writ Petition therefore deserves to be dismissed.

WRIT PETITION NO. 5966/2006 :

5. By this petition, Petitioner challenges order dated 14 June 2005 passed by the Industrial Tribunal, Kolhapur dismissing Complaint (ULP) No.351/1992. The complaint was filed by Petitioner in respect of demand for non-grant of increments during the period 18 December 1988 to 18 December 1991. Petitioner

was terminated from service and as a result of order passed by the Labour Court on 8 July 1992, he came to be reinstated. The reinstatement was directed without any backwages but with continuity of service. It was Petitioner's case that, since continuity of service is granted, he is required to be granted increments during the intervening period from termination till reinstatement.

6. I have considered the judgment of the Industrial Tribunal. The Industrial Tribunal has relied upon the judgment of the Apex Court in A.P.S.R.T.C. V/s. S. Narasagoud, 2003 1 CLR 511 in which the Apex Court has held as under :

“9. We find merit in the submission to be made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence, in our opinion the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increment notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with benefit of continuity in service.

10. The regulations referred to herein above clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of overstay after the expiry of leave or

joining time cannot count towards increments unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of overstay into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period or unauthorized absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or period of overstay. Ordinarily the increments are earned on account of the period actually spent on leave the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling increments during the period of unauthorized absence from duty though held liable to be punished in departmental inquiry proceeding would amount to putting a premium on the misconduct of the employee.”

7. Thus in the judgment of the Apex Court relied upon by the Industrial Tribunal, it is held that mere direction for continuity of service would not encompass a direction for grant of increments. It has held that unless a Court issues a specific direction for grant of consequential benefits, increments would not flow out of direction for grant of continuity of service.

8. In my view, the Industrial Tribunal has correctly denied the relief of increments to Petitioner by relying upon the judgment of the Apex Court in ***A.P.S.R.T.C*** (supra). No case is made out for interference by this Court in exercise of jurisdiction under Article

227 of the Constitution of India. The Writ Petition deserves to be dismissed.

9. Accordingly, both Writ Petition No.5966/2006 and 2924/2007 are devoid of merits and are **dismissed** without any order as to costs.

10. Mr. Bhavake, the learned Counsel would submit that Petitioner has retired from service on 30 September 2015. That the Respondent-Bank is under liquidation and now the State Government has taken a decision to release the retirement benefits of employees of the Bank. He would submit that Petitioner's gratuity is not paid on account of pendency of the two Writ Petitions. Now that the Writ Petitions are disposed of, there should be no hurdle in releasing the amount of gratuity payable to Petitioner. The Liquidator of the Respondent-Bank shall accordingly release the gratuity payable to Petitioner within a period of four weeks from today.

(SANDEEP V. MARNE, J.)