

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13534 OF 2023

Arvind Shivaji Shirke

.. Petitioner

Versus

Gramvikas Adhikari,
Grampanchayat Shiye,
Office at Shiye, Tal. Karveer,
Dist. Kolhapur.

.. Respondent

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• Mr. Nikhil N. Pawar for Petitioner

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 31, 2023

P.C.:

1. Heard Mr. Pawar, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the impugned Judgment & Order dated 05.07.2023 passed by the Industrial Court in Revision Application (ULP) No. 65 of 2019, *inter alia*, partly setting aside the order of the Labour Court dated 01.01.2019 to the extent of granting full back wages with all consequential benefits while retaining the remaining order.
3. Mr. Pawar has taken me through the Judgment dated 01.01.2019 passed by the learned Labour Court which is at Exh. "C" (page Nos. 41-47) of Petition to demonstrate that the Complaint came to be allowed holding that oral termination of the Complainant (Petitioner herein) was illegal and directions to reinstate the Petitioner

with full back wages and continuity of service were passed on the basis of material documentary evidence which was placed on record. In paragraph No. 10 of the order of the Labour Court, it is noted that despite opportunity, Respondent Gramvikas Adhikari, Grampanchayat Shiye, Tal. Karveer, Dist. Kolhapur did not adduce any evidence or lead any evidence nor placed anything on record in support of its claim. On the contrary, in so far as the Petitioner is concerned, he had deposed virtually everything in support of his case and after his evidence, numerous opportunities were given to Respondent, but Respondent failed to cross-examine the Petitioner - Complainant also. Such is the finding recorded in paragraph No. 9 of the order passed by the learned Labour Court. There is also a clear finding to the effect that termination of the Petitioner-Complainant was oral without any valid reason, without issuing show-cause-notice nor was he offered any opportunity to defend himself. Before the learned Labour Court, Respondent made no attempt whatsoever to discard the case of the Petitioner Complainant.

4. In view of the above findings returned by learned Labour Court, the learned Industrial Court in Revision proceedings has returned findings in support of the said order. Learned Industrial Court notably concludes that services of Petitioner Complainant were terminated suddenly and before his termination, he was not given

charge sheet nor any enquiry was conducted nor any notice pay was paid to him nor any retrenchment compensation was given to him. However, learned Industrial Court has given one reason namely the fact that learned Labour Court has not considered the staffing pattern applicable to the Grampanchayat to apply the principle of “*Last come first go*” before terminating the services of Petitioner Complainant and only on this count has partly set aside the order of the learned Labour Court to grant full back wages to the Petitioner Complainant. It would have been trite for the learned Industrial Court in Revision Proceedings to have remanded the matter back to the Labour Court if it had come to such a conclusion as appearing in paragraph No. 10 of its order. Without there being any adjudication on this aspect either by the learned Labour Court or even for that matter by the learned Industrial Court, quashing and setting aside the order of the learned Labour Court granting full back wages with all consequential benefits is therefore not sustainable in law. However, considering the fact that it is an admitted position in the present case that Petitioner-Complainant is an employee employed on a seasonal basis for several years and he has admittedly completed 240 days service in every year and the fact that Respondent Grampanchayat has also passed a resolution in respect of the Petitioner-Complainant, termination of his services suddenly without adhering to the principle of “*Last come first go*” and taking into account the staffing pattern is arbitrary and high

handed.

5. I have perused both the orders passed by learned Labour Court and the learned Industrial Court and it would be in the interest of justice if the learned Labour Court is directed to consider the issue of “*Last come first go*” and the staffing pattern applicable to the Respondent-Grampanchayat and decide the same. In that view of the matter, the impugned order dated 05.07.2023 passed by the Industrial Court is quashed and set aside. The order dated 01.01.2019 passed by the learned Labour Court is held in abeyance. Remand is made to the learned Labour Court to consider the issue raised by the learned Industrial Court with respect to applying the principle of “*Last come first go*” and the staffing pattern applicable to the Respondent-Grampanchayat and to give a considered reasoned decision after hearing both the parties strictly in accordance with law.

6. Labour Court shall issue notice to Respondent-Grampanchayat seeking details of the staffing pattern of its employees as applicable to the said Grampanchayat, allow the Petitioner to consider the said staffing pattern filed by the Respondent Grampanchayat, permit both parties to file their respective submissions on the principle of “*Last come first go*” and the staffing pattern applicable to the Grampanchayat and after framing the issue in respect thereof, determine the same and give a reasoned speaking

order. After determining the above issue, the learned Labour Court shall merge the order dated 01.01.2019 with its findings and pass a composite final order to that effect thereafter.

7. Adhering to the request made by Mr. Pawar, learned Labour Court is directed to complete the aforementioned remand hearing within a period of three months from the date of uploading of this order.

8. Writ Petition is disposed.

Amberkar

[MILIND N. JADHAV, J.]

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