

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 2557 of 2018

Babasaheb Kedar Shetkari Sahakari Sut Girni Limited

Versus

Ashok Govindrao Baghade and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.D.Raut, Advocate for the petitioner.

Shri S.G.Nigot, Advocate for the respondent no.1.

Shri H.N.Jaipurkar, AGP for the respondent no.2

CORAM : ANIL S. KILOR, J.

DATED : 27th FEBRUARY, 2023.

Heard.

2. The challenge is raised to the judgment and order dated 31st December, 2007 passed by the Industrial Court, upholding the order of the Labour Court, setting aside the termination of the respondent no.1.

3. Learned counsel for the petitioner submits that the findings recorded by both the Courts below are perverse holding that, no evidence was brought on record by the employer to show that the respondent no.1 prevented the other employees from attending the duties. It would submit that there was a strike for 18

days and respondent no.1 was responsible for the same and because of him huge losses caused to the establishment. It is submitted that ignoring the evidence led by the employee, the re-instatement was granted with back wages.

4. It is submitted that irrespective of the evidence brought before the inquiry committee independently the evidence was led before the Labour Court to establish the charges leveled against the respondent no.1. It is submitted that there were four charges which were leveled against the respondent no.1 and despite the fact that all the charges proved by leading evidence before the Labour Court. It was not considered in right perspective and allowed the complaint and quashed and set aside the dismissal order of the applicant dated 25th September, 1992, and directed to reinstate the respondent no.1 with continuity of service and to pay 50% back wages from the date of suspension till reinstatement.

5. It is submitted that back wages were granted without considering the fact that no evidence was led by the employee to the effect that he was not in gainful employment during the period of termination. Accordingly, it is submitted that the impugned orders

are illegal, bad in law and liable to be quashed and set aside.

6. On the other hand, learned counsel for the respondent submits that though there were four charges no evidence is brought on record by the employer to establish a single charge.

7. He further submits that no cross-examination was conducted by the employer on the point of gainful employment or no evidence was brought by the employer that the respondent no.1 was in gainful employment during the period termination. It is accordingly submitted that no illegality or perversity is committed by both the Courts below.

8. Learned Assistant Government Pleader supports the impugned judgment and order.

9. In the light of the rival submission of learned counsel for the respective parties, I have perused the writ petition, the documents filed alongwith the writ petition and deposition of witnesses and impugned judgment and order.

10. From the record, it is evident that in the chargesheet four charges were leveled against the respondent no.1, namely (i) without giving any prior notice the respondent no.1 went on strike on 1st June, 1991 and instigated winding and doubling employees to

go on strike; (ii) despite instructions issued by the Management to join on duties, the respondent no.1 did not join the duties and illegally prevented employees of winding department from joining the duty on 1st June, 1991, 3rd June, 1991 and 11th June, 1991; (iii) the respondent no.1 himself with Shri Ghanshyam Awchat, Shri Raju Chatur and Shri Subhash Atkare stopped first level employees at the main door and thereby conducted illegal strike on 4th June, 1991 and thereby caused financial losses to the establishment; (iv) by doing misconduct the work of the establishment was closed down and caused damages to the establishment.

11. After going through the evidence led by the petitioner before the Labour Court and cross-examination of the witnesses of the petitioner, it is evident that undisputedly there were three shifts and strike was continued for about 17 days in all the three shifts. No evidence has been placed on record by the petitioner to establish that the respondent no.1 was present in all three shifts on the gate, preventing the employees to enter into the establishment and to do the work.

12. So also, no evidence has been brought on record about the loss caused to the establishment.

13. As far as the charge about causing damages to the establishment is concerned, in this regard no evidence has been placed on record or pointed out by the learned counsel for the petitioner. On the contrary, in the cross-examination the witnesses of the petitioner has categorically pointed out that they were not in position to point out how much loss is caused to the establishment. Thus, the petitioner failed to prove fourth charges also.

14. Further so far as gainful employment is concerned, learned Industrial Court has categorically observed as follows:

“As against this, Ld. Counsel appearing on behalf of the opponent-applicant contended that, by virtue of Judgment and order dated 13/12/2010 the opponent-applicant has been reinstated in service. Not only this but, it is also contended on behalf of the opponent-applicant that, the applicant deposed before the Trial court that, during intervening period he was not at all employed any where nor he was engaged in any trade or business in any point of time. This fact has not been rebutted on behalf of the appellant-opponent.”

15. Nothing has been brought on record contrary to the above referred observation recorded by the learned Industrial Court.

16. In that view of the matter, I do not find any perversity in the findings recorded by the learned

Industrial Court or granting back wages to the respondent no.1.

17. In the circumstances, I do not find any merit in this petition. Accordingly, writ petition is dismissed.

[ANIL S. KILOR, J.]

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