

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

WRIT PETITION NO. 2343 OF 2016

Anna S/o Saduji Manwar,
Aged 67 years, Occ. Nil,
R/o Ward No.22, Mangrulpir, District
Washim

...Petitioner

// VERSUS //

1. Divisional Manager/Zonal Manager,
The Maharashtra State Co-op. Cotton
Growers Marketing Fed. Ltd. Akola,
Tal. & Dist. Akola
 2. Sub-Divisional Manager, M.S. Co-op.
Cotton Growers Marketing Fed. Ltd.,
Karanja, Dist. Washim
 3. The Learned Member, Industrial Court, Akola
- ... Respondents

Shri Nikhil Tekade, Advocate for the petitioner.

Shri V.G.Wankhede, Advocate for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 27th JULY, 2023.

ORAL JUDGMENT :

The petitioner was terminated as 'Clerk' after conducting an inquiry. The said termination was set aside by the learned Labour Court in Complaint (ULP) No. 312 of 1995 vide order dated 2nd December, 2008 and reversed by the learned Industrial Court in Revision (ULP) No. 48 of 2008 vide impugned judgment and order dated 3rd March, 2016, which is the subject matter of the present writ petition.

2. The learned Labour Court while deciding the preliminary issue as regards fairness of the inquiry, has held that the inquiry conducted against the petitioner into charges of misconduct is illegal, improper and unfair and against the principal of natural justice.

3. The learned Labour Court further held that the findings recorded by the inquiry officer holding charges of misconduct duly proved, are perverse and contrary to law. Therefore, the respondent-Corporation was directed by the learned Labour Court to prove the charge by leading evidence before the Court vide order dated 27th September, 2005.

4. However, despite the repeated opportunities granted to the respondent- Corporation to adduce the evidence, the respondent failed to lead evidence proving the misconduct and therefore, on 8th July, 2008, the order of closing of evidence of respondent was passed.

5. Thereafter, the application for setting aside the said order was rejected and thus, it is evident that no evidence was led by the respondent to prove the alleged misconduct against the petitioner and therefore, in absence of any evidence establishing the alleged misconduct committed by the petitioner, the complaint was allowed and the petitioner was directed to re-instate on its previous position with continuity in service and backwages.

6. In revision, the learned Industrial Court reversed the findings on the preliminary issue and held that the inquiry was fair and no

perversity was committed by the Inquiry Officer holding that the charges are proved. The Industrial Court, therefore, while reversing the judgment of reinstatement and payment of back wages has placed reliance on the findings recorded by the inquiry officer in the departmental inquiry.

7. After going through the record, it is evident that the departmental inquiry was initiated against two employees namely Shri Kute and petitioner. The charges against both the employees were same and therefore, in the departmental inquiry a pursis was filed to rely upon the evidence led in the case of an employee Shri Kute.

8. Thus, it is evident that no evidence was led in the departmental proceedings, as far as the proceedings initiated against the petitioner and the evidence led in the case of Shri Kute that was relying upon at the request of the respondent-Corporation. However, after going through the said evidence, it is evident that there is no evidence against the petitioner. Not a single witness states the name of the petitioner in the oral evidence.

9. Thus, from the evidence led in the department inquiry, nothing has come against the petitioner to hold the petitioner guilty for the charge of misconduct. In absence of any such evidence, reversal of the judgment passed by the learned Labour Court directing reinstatement and backwages, is contrary to the evidence available on record.

10. Hence, I have no hesitation to hold that the findings of reversing of the judgment of the learned Labour Court recorded by the learned Industrial Court are perverse and without any evidence.

9. In the circumstances, the impugned judgment and order passed by the learned industrial Court dated 3rd March, 2016 is liable to be quashed and set aside.

11. At this stage, learned counsel for the respondent-Corporation points out that the petitioner has attained the age of superannuation long back and his present age as per the title caluse is more than 70 years. According to him, the age of superannuation is 58 years.

12. Considering the statement made by the learned counsel for the respondent, it is clear that the order of reinstatement cannot be granted in this case.

13. As far as the backwages are concerned, admittedly, there is no statement made in the complaint before the Labour Court that the petitioner was not gainfully employed elsewhere during the period of termination.

14. Nonetheless, considering the fact that the termination of the petitioner was found illegal and based on the perverse findings recorded by the inquiry officer that the charges of misconduct were proved, hence, I am of the opinion that the petitioner is entitled for compensation. Accordingly, I pass the following order.

- i. Writ petition is allowed.
- ii. Impugned order dated 3rd March, 2016 passed by the learned Industrial Court in Revision (ULP) No. 48 of 2008 is hereby quashed and set aside and thereby the judgment and order of the learned Labour Court is hereby modified with the following terms.
 - a. The respondent-Corporation is directed to pay compensation equal to the amount of 25% backwages (from the date of termination till the date of superannuation), within a period of three months from today.
 - b. The respondent-Corporation is directed to grant continuity of service for all other purpose.

Accordingly, the writ petition is disposed of in above terms.

[ANIL S. KILOR, J.]

Digitally signed
by
SACHIDANAND
KUTTAN NAIR
Date:
2023.08.07
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