

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

WRIT PETITION NO. 2501/2018

*DIVISIONAL MANAGER, FOREST DEVELOPMENT CORPORATION LIMITED FOREST
PROJECT DIVISION, BHANDARA AND ANR.*

VS

LALDAS S/O HARI BADOLE

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

Court's or Judge's Order

Mr. Mohan Sudame, Advocate for the petitioners
Mr. R.S. Bhure, Advocate for the respondent

CORAM : A. S. KILOR, J.

DATED : 26/06/2023

Heard.

2. This writ petition takes an exception to the order dated 27.12.2017 passed by the learned Labour Court, Bhandara answering the reference in affirmative and directing the petitioners to reinstate the respondent with continuity of service and back-wages from the date of the letter dated 12.04.2005 i.e. after his acquittal in criminal case.

3. In the present matter, the said award was complied to the extent of the reinstatement of the respondent. The

respondent after his reinstatement has attained the age of superannuation and, therefore, the question of reinstatement does not survive in the present matter. The only point which now, therefore, required to be examined is as regards the challenge raised to the full back-wages to the respondent.

4. The petitioners have deposited 25% of the amount of back-wages in this Court in pursuance to the order dated 27.04.2018, the same is lying in this Court.

5. The learned Counsel for the petitioners has raised the challenge to the back-wages only on the ground that there is no statement of claim made by the respondent that he was not gainfully employed elsewhere during the period he was under termination and also no evidence to that effect was laid by the respondent.

6. On the other hand, the learned Counsel for the respondent states that once the termination is found illegal and reinstatement is granted, the natural consequence needs to be followed giving effect to it as if the respondent was

never terminated and he was continuously in employment. He, therefore, submits that the learned Labour Court has rightly granted the back-wages.

7. The law in respect of back-wages is well settled which requires that the employee has to establish that he was not in gainful employment elsewhere during the period of termination. There is no dispute in this case that no such evidence was laid by the respondent or pleading was made in this regard stating that, the respondent was not gainfully employed elsewhere. However, considering the findings recorded as regards the illegality committed while terminating the respondent and not reinstating him after acquittal, by the learned Labour Court while answering the reference in affirmative, I am of the opinion that the respondent is entitled for compensation to the extent of amount of 50% back-wages. Accordingly, I pass the following order:

(I) The writ petition is **partly allowed**.

(II) The impugned award dated 27.12.2017,

passed by the learned Labour Court, Bhandara in Ref. IDA No. 05/2006, is hereby modified and it is directed to the petitioners to pay the compensation to the respondent, to the extent of the amount of 50% back-wages.

(III) The amount which has already deposited by the petitioners is permitted to be withdrawn by the respondent.

(IV) The petitioners to pay the balance amount of compensation to the respondent within ten weeks from today.

8. Accordingly, the writ petition is disposed of with no order as to costs.

JUDGE