

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

Writ Petition (WP) No. 3964 of 2018

Zilla Parishad, Amravati

Versus

Kishor Bhaurao Kandalkar (Dead) through his Legal Representatives Smt.
Savita Kishor Kandalkar and others

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

Court's or Judge's Order

Shri J.B.Kasat, Advocate for the petitioner.

Shri C.A.Babrekar, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.

DATED : 7th JULY, 2023.

Heard.

2. In this writ petition, the order passed in Complaint (U.L.P) No. 21 of 2005 filed by the Kishor Bhaurao Kandalkar, thereby quashing and setting aside the dismissal order of the respondent and further directing the petitioner to pay 50% back wages to the Legal Representatives of the complainant from the date of his dismissal till the date of his death, is under challenge.

3. The Labour Court initially passed an order on a Preliminary Issue i.e. on the fairness of the inquiry

conducted in respect of the chargesheet dated 14th May, 2001 and has held that inquiry conducted by the respondent against the complainant is not legal and proper and in violation of principles of natural justice. It is further held that the findings of the inquiry officer are perverse.

4. The learned Labour Court further permitted the petitioner to prove the misconduct against the complainant before the Court.

5. Despite such permission to prove the charges by leading evidence and further despite the numerous chances given to the petitioner, the petitioner failed to lead any evidence proving the charges against the complainant and therefore, the case was closed without evidence of the petitioner. Thus, considering the fact that findings recorded by the inquiry officer was perverse and as the petitioner failed to prove the charges, the complaint was allowed and thereby the order of dismissal dated 28th October, 2002 came to be set aside with direction to pay 50% back wages by the petitioner to the legal representatives of the deceased Kishor Bhaurao Kandalkar.

6. Shri Kasat, learned counsel for the petitioner submits that as the complainant admitted the guilt, there is no question of leading of evidence to

prove charges against the complainant. He has further tried to canvas before this Court by pointing out, the reply of the complainant that he has admitted the charges. However, on a specific question that if according to the petitioner, the reply of the complainant is of admission, then why departmental inquiry was conducted. The learned counsel for the petitioner could not answer the query. If the petitioner is of the opinion that the reply of the complainant is of admission of guilt, there was no occasion for the petitioner to proceed with the departmental inquiry against the complainant.

7. Nonetheless, after going through the reply, it cannot be said that there was a clear admission of the guilt. The reply suggests that certain irregularities have been accepted by the respondent but he has not admitted the charge of misappropriation.

8. Irregularities admitted to some extent are in respect of maintaining the record and proceeding.

9. Shri Kasat, learned counsel for the petitioner now submits that in absence of any pleading that the complainant was not in gainful employment during the period of termination, he is not entitled for backwages.

10. The Hon'ble Supreme Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya*¹ has held thus :

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee

1 (2013) 10 SCC 324

concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

11. Considering the above referred observations, it can be seen that nothing has been brought on record by the petitioner to show that the respondent was in gainfully employed elsewhere after his termination.

12. The complainant was died in the year 2013 during the pendency of the complaint before the Labour Court and therefore the question of reinstatement was not the issue before the Labour Court. Admittedly, on the date of death of the complainant, he did not attain the age of superannuation. Had he not died, the Labour Court would have granted reinstatement in view of the findings recorded by the Labour Court. Hence, order granting of 50% backwages is just and proper.

13. In the above referred backdrop, I am of the opinion that no interference is required in the present matter. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]