

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

WRIT PETITION NO. 7219 OF 2019

The Executive Engineer (Civil) MSETCL and anr__ Vs. __ Shrikant Madhukar
Mudaliar

AND

WRIT PETITION NO. 617 OF 2019

Shrikant Madhukar Mudliyar__ Vs. __ The Executive Engineer (Civil) MSETCL and
anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.D.Zoting, Advocate for petitioner in W.PNo. 7219/2019 and for Respondent
No.1 in W.PNo. 617/2019

Mr. A.R.Deshpande, Advocate for for petitioner in W.PNo. 617/2019 and for
Respondent in W.PNo. 7219/2019.

CORAM : AVINASH G. GHAROTE, J.

DATE : 11/04/2023

WRIT PETITION NO. 7219 OF 2019

1] Heard Mr. Zoting, learned counsel for the
petitioner in WP No.7219/2019 & for respondent
No.1 in WP No.617/2019 and Mr. Deshpande,
learned counsel for the respondent in WP No.
7219/2019 & for petitioner in WP No. 617/2019.

2] The petition challenges the judgment
dated 14.6.2017 passed by the learned Labour Court
partly allowing the complaint filed by the
respondent, thereby setting aside the order of
dismissal dated 27.7.2006 of the respondent and

directing reinstatement with continuity of service without back-wages (pg.45). This was challenged before the learned Industrial Court by way of Revision No. 22/2017 by the present petitioners, questioning the reinstatement and in Revision No.27/2017 by the respondent/employee, questioning the denial of back-wages. The learned Industrial Court by the judgment dated 4.10.2018 (pg.32) has dismissed both the revisions, as a result of which Writ Petition No. 7219/2019 has been filed by the petitioners questioning the reinstatement and Writ Petition No. 617/2019 has been filed by the respondent/employee questioning the denial of back-wages.

3] In so far as the challenge to the reinstatement and consequential benefits are concerned, Mr. Zoting, learned counsel for the petitioners in WP No.7219/2019, submits that the respondent/employee who was the plumber in the service of the petitioners, on account of the water scarcity in the city of Akola, was directed to switch off water coolers and on 2.6.2005 when one Shri Verulkar was occupying the rest house and the water cooler was running, had switched it off; the same was again switched on by Mr. Verulkar, whereupon

the instructions of the employer were brought to his notice, which were ignored by him and a complaint was made against the respondent/employee of abusing him in a filthy language and also assaulting him.

4] Enquiry was conducted after issuing charge-sheet. The learned Labour Court on the preliminary issue of the conduct of inquiry, has answered the same in the negative by the order dated 8.9.2015 (pg.76) and has held that the enquiry stands vitiated and permitted the petitioners/employer to lead evidence to prove the misconduct of the respondent/employee as alleged in the charge-sheet. Four witnesses were examined, viz. Mr. Verulkar - the victim; Madhukar Dongare – the watchman; Vilas Aakode – the Clerk and Subhas Pundkar – the Executive Engineer. Though it is alleged that the incident had happened during working hours at 2–3 pm on 2.6.2005, considering the variance between the note-sheet put up by Vilas at Exh.76 and his oral version, the evidence of Vilas was held not to be trustworthy. In fact Vilas has even admitted that he has not lodged the police complaint in respect of the said incident. Vilas in his cross examination has categorically stated that he did not

have any personal knowledge about the assault by the complainant upon any official.

5] The evidence of the victim viz. Fakira Sampat Verulkar at Exh.120 indicates that though in the examination-in-chief, he states about the assault by the respondent/employee, however, in the cross examination, he categorically admits that the entire incident of assault which is narrated in para 3 of the affidavit is not mentioned in his letter dated 3.6.2005, which was a complaint made to the higher officers, and therefore, destroys the credibility of his evidence. The evidence of Madhukar Dongare indicates that his duty was on the gate of the rest house as a watchman and his duty hours were from 4.00 pm in the afternoon till 12.00 midnight. His cross examination further indicates an admission that at about 7 o' clock when the officer Mr. Verulkar had been to the rest house, he along with another employee Kailash were not present near the TV in the rest house. This would clearly indicate that Madhukar himself admits that he was not an eye witness to the incident.

6] That being the position, in my considered opinion, the concurrent finding of facts rendered by

the authorities below regarding the improbability of the alleged incident cannot be disturbed. The Petition No. 7219/2019 therefore does not hold any merit and is accordingly dismissed.

WRIT PETITION NO. 617/2019

7] In so far as W.P. No.617/2019 is concerned, the same questions to the denial of back-wages by the Courts below.

8] It is contended by Mr. Deshpande, learned counsel for the petitioner/employee, relying upon **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324**, that the dismissal of the employee having been found to be illegal, the employee would be entitled to full back-wages.

9] In my considered opinion, **Deepali Gundu Surwase** (supra) lays down propositions in para 38, in which para 38.2 specifically lays down the parameters to be considered by the Court for consideration of the plea for grant of back-wages. The Hon'ble Apex Court in **Management of Regional Chief Engineer, Public Health and Engineering**

Department vrs. Their Workmen represented by District Secretary, (2019) 18 SCC 814; after considering **Deepali Gundu Surwase** (supra), has held that it is necessary for the workman to plead and prove with the aid of evidence that after his dismissal from service, he was not gainfully employed anywhere and had no earnings to maintain himself and/or his family and the initial burden for the same would be upon the employee. In the instant case, except for a statement made in para 14-B (pg.30) that after termination of the complainant/employee, he has no source of income, which has been reiterated in para 9 of the affidavit (pg.54), there is no material brought on record to indicate what was the source of income for the petitioner/employee for his survival, after his removal from the service in the year 2006. This would indicate that the initial burden as contemplated by **Management of Regional Chief Engineer, Public Health and Engineering Department** (supra) has not been fully discharged by the petitioner/employee. It is also apparent that even the employer has not placed anything on record to indicate the gainful employment of the employee during the aforesaid duration, nor has the employer placed on record the material in consonance to what

has been contemplated by para 38.2, in **Deepali Surwase** (supra).

10] The judgment of the learned Labour Court in para 18 (pg.87) has noted that no material has been brought on record by the employee regarding not being in gainful employment after his removal. The position has been considered by the learned Industrial Court in para 19 (pg.118) of the impugned judgment dated 4.10.2018, however, in such circumstances, since there is already a statement regarding the employee not being in gainful employment contained in the complaint as well as in the affidavit, as discussed above, there is some material in this regard brought on record by the complainant/employee, in view of which, in my considered opinion, the employee ought to be held to be entitled to back-wages at the rate of 50% in view of the legal principles as applicable in that regard, as a balance has to be struck in that regard, as rightly held in **Lady Yashodabai Joshi Ladies Club and ors vrs. Mrudula Govindrao Kavishwar, 2022 DGLS Bombay 3620** (para 20).

11] In the result, W.P. No. 617/2019 is partly allowed in the above terms, holding that the

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employee is entitled to back-wages at the rate of 50% from the date of the termination. No costs.

JUDGE

Rvjalit