

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

Writ Petition No.2283 of 2018

CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD, AMRAVATI VS KAILASH S/O BANSILAL DHIMAN

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

Court's or Judge's Order

Shri S.M. Bhangde, Advocate for the Petitioner
Shri N.R. Saboo, Advocate for the respondent-sole

**CORAM : ANIL S. KILOR, J.
DATED : 06.02.2023**

1. Heard.
2. In this writ petition, confirmation of the order of reinstatement with continuity of service and 50% back wages granted to the respondent-sole, by the Industrial Court vide impugned judgment and order dated 12.10.2017, is under challenge.
3. The brief fact of the present case are as under:

The respondent was working with the petitioner as 'Skilled Employee' on daily wages. Prior to 31.01.1988, he was working at Division Office, Amrawati and he was transferred to Sub-Division No.5 at Tiwsa and there he worked as Operator of Diesel Engine. The services of the respondent were terminated w.e.f. 31.01.1988 for patently false reasons and therefore, the complaint was filed before the Labour Court on the grounds mentioned in the complaint.

4. The Labour Court on its judgment and order dated 06.11.1998 allowed the complaint and directed to reinstate the respondent and pay 50 % of the back wages.

5. The Learned Industrial Court on filing the revision application by the petitioner, dismissed the revision vide order dated 18.10.2000, the said judgment and order was carried in Writ Petition No.4139 of 2000.

6. This Court remanded the matter to the Labour Court for afresh consideration. Thereupon, the Labour Court vide order dated 02.09.2014 allowed the complaint and directed the petitioner to reinstate the respondent with 50 % of the back wages.

7. The petitioner feeling aggrieved by the same, preferred the revision application, namely Revision ULP No.39 of 2015 which came to be dismissed vide judgment and order dated 12.10.2017, the same is the subject matter of the present writ petition.

8. I have heard the learned counsel for the parties.

9. The learned counsel for the petitioner points out that the notice under Section 25 (f) of the Industrial Disputes Act, 1947, was issued to the respondent and he was called to collect the compensation against the retrenchment, however, he failed to collect and as such, there is a compliance of Section 25 (f) of the Industrial Disputes Act. It is submitted that, despite this, the termination was set aside on the ground that there is no compliance of Section 25(f) of the Industrial Disputes Act.

10. He further submits that the reinstatement and back wages granted, is erroneous. For this purpose, he has place reliance on the judgment of the Hon'ble Supreme Court of India, in the case of *Bharat Sanchar Nigam LTD Vs. Bhuruma*¹.

11. On the contrary, the learned counsel for the respondent, points out that the complaint of the respondent was allowed by the Labour Court and the same was upheld by the Industrial Court in revision as both the Courts-below have found that the services of the respondent were terminated for patently false reasons.

12. It is further pointed out that since the first order of the learned Labour Court dated 06.11.1998 though repeatedly the directions were issued to the petitioner to reinstate the respondent, the petitioner failed to reinstate the respondent and therefore, challenge to payment of back wages cannot be permitted. He therefore, submits that the respondent is entitled for back wages as directed by both the Courts-below.

13. The learned counsel for the respondent has drawn attention of this Court to the judgment passed by this Court in the case of *Dilip Nathuji Pojge and Ors.* (Writ Petition No.1136 of 2018) in similar matter. The respondents therein, who were similarly placed, were appointed by the petitioner and subsequently terminated. The respondents therein succeeded before the Labour Court and the Industrial Court and against the same the said writ petition was filed by the petitioner therein. The said writ petition was dismissed and the orders of the Labour Court

1 2015(1) Mh.L.J. 5

and the Industrial Court were upheld. It is further submitted that the said order was never challenged and therefore, it has attained the finality. It is submitted that the case of the respondent is similar to the above mentioned petition and therefore, it is prayed that this petition needs be dismissed.

14. The learned counsel for the respondent in support of his submission has placed reliance on the judgment of the Hon'ble Supreme Court of India in the Case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya*².

15. In the light of the rival submissions of both the parties, I have perused the writ petition, documents filed along with it and the impugned judgments and orders.

16. Both the Courts-below after scrutinizing the oral as well as documentary evidence available on record, have concurrently held that the termination of the respondent was for patently false reasons. Both the Courts-below have observed that many other similarly situated employees were absorbed by the petitioner, after termination of the respondent. It is further observed that even after the termination of the respondent, the work was continued and as such despite having work available, the respondent was terminated.

17. Thus, in absence of any perversity pointed out by the learned counsel for the petitioner, I do not want to intervene with the concurrent finding recorded in favour of the respondent

² (2013) 10 SCC 324

as regards the termination of the respondent on patently false reasons.

18. There is no dispute about the law laid down by the Hon'ble Supreme Court of India in the case of *Bharat Sanchar Nigam LTD Vs. Bhurumal* (supra), however, in this case, it cannot be ignored that the learned Labour Court directed the petitioner to pay only 50 % of the back wages and not the full back wages. Furthermore, it is necessary to appreciate the fact that since 1998, though repeatedly directions were issued to the petitioner to reinstate the respondent, the petitioner did not reinstate the respondent and prolonged the matter till attainment of superannuation age of the respondent.

19. Thus, considering the conduct of the petitioner that despite repeated directions to reinstate, the respondent was not reinstated and further as the termination was on patently false grounds, I do not find any error committed by both the Courts-below in granting 50 % of the back wages. In that view of the matter, I do not find merit in the present petition, accordingly, it is **dismissed**.

[ANIL S. KILOR, J.]