



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5157 OF 2019

Upmukhya Karyakari Adhikari
Zilla Parishad, Ahmednagar & another .. Petitioners

versus

Pushpa Vilas Pote .. Respondent

Ms. M. V. Narwade, Advocate holding for Mr. S. M. Zaware, Advocate
for the Petitioners.

Mr. P. V. Barde, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 18th JUNE, 2024.

PER COURT :

1. This Petition takes exception to the judgment dated 16.04.2013 passed by the Labour Court, Ahmednagar in complaint ULP No. 36/2008 and judgment dated 24.11.2017 passed by the Industrial Court, Ahmednagar, in Revision ULP No. 28/2013.

2. Respondent claims herself to be Anganwadi Sewika in the establishment of Respondent No. 2 under the administrative control of Respondent No. 1. She was posted at Mokal, Tq. Rahuri, Dist. Ahmednagar vide letter dated 31.03.1991. She claims to have put in continued service of 240 days prior to termination of her services on 12.08.2008. she claims that she was terminated for alleged

absentism without charge-sheet or conducting any departmental enquiry against her. This, according to her, amounts to unfair labour practice as contemplated by Item 1 a, b, d, f, g of MRTU and PULP Act, 1971.

3. Petitioners herein appeared before the Labour Court and claimed that the establishment of this Respondent is semi Government establishment and was entrusted with the responsibility to work on the project of child development. It is further contended that the complainant was entrusted with the responsibility to look after physical and mental development of children at Anganwadi. It is alleged that the complainant remained unauthorisedly absent and after giving her opportunity to explain, her services were terminated with effect from 12.08.2008. According to Petitioners, in view of the Government Resolution dated 12.04.2007, before terminating services of Anganwadi Sewika, only issuance of show cause notice and to seek explanation is sufficient and no departmental enquiry is required to be conducted. The learned Labour Court, after permitting the parties to lead evidence, recorded finding that the Respondents/employer have committed unfair labour practice and since the termination of services was without enquiry, the same is

held to be illegal. The complainant was directed to be reinstated in service with monetary benefits.

4. The Petitioner/employer challenged the said judgment in Revision ULP No. 28/2013. Learned Revisional Court confirmed the findings recorded by the Labour Court to the effect that termination of services is without conducting departmental enquiry and the termination being punitive in nature. However, interference was caused in the order of grant of backwages and the same was reduced to the extent of 30% from the date of termination.

5. Learned counsel for the Petitioners submits that the Respondent/complainant was contractual employee and considering the Government Resolution applicable to the establishment, seeking explanation was sufficient and for the purpose of termination of services no enquiry was required to be conducted. It is her further submission that both the Courts below have committed error in grant of backwages to the complainant. According to her, in absence of any evidence being adduced that the complainant was not gainfully employed inspite of an attempt being made to that effect, there is no justification for grant of any backwages.

6. Learned counsel for Respondent/complainant drew attention of the Court to the observations made by the Revisional Court in paragraph No. 15 wherein it is recorded that there is evidence adduced by complainant about she being maintained by her relatives for all these years.

7. There is no dispute about the fact that the complainant was employed as Anganwadi Sewika on the establishment of Respondent Nos. 1 and 2. Her date of appointment is also not in dispute. There is no specific case sought to be made out by the employer that she did not perform continuous service of 240 days. Undisputedly, the complainant was terminated from service for the alleged mis-conduct of absentism. No charge-sheet was issued to the complainant nor any departmental enquiry was conducted against her before said termination. In the light of these facts, no perversity is found by this Court in the findings recorded by Labour Court and confirmed by Industrial Court with regard to the action of termination being bad in law.

8. A specific query was made to the learned counsel for Petitioners to point out as to whether in the written statement any

leave was sought to prove the mis-conduct by leading evidence. Perusal of written statement does not show that any such leave was asked for. In the case of Karnataka State Road Transport Corporation vs. Laxmidevamma & another, **AIR 2001 Supreme Court 2090**, it is held by the Hon'ble Supreme Court that it is incumbent on the part of the employer to seek permission to prove mis-conduct before the Court and in absence of any plea being raised, it is not open for the employer to prove mis-conduct before the Court. Applying the said principle, since the employer in this case has not sought any such leave of the Court to prove mis-conduct, it was not open for the Respondents to prove the same by leading evidence before the Labour Court.

9. Once it is held that the dismissal of employee is bad in law for want of conduct of domestic/departmental enquiry for employment mis-conduct and where no prayer is made by employer to prove mis-conduct before the Court/Tribunal, the order of reinstatement cannot be faulted. Thus, this Court finds no reason to cause interference in the order or re-instatement granted by Labour Court and confirmed by the Industrial Court.

10. As far as relief of backwages is concerned, though no specific findings are found in the judgment of the Labour Court but the Revision Court has clearly recorded finding that there is statement of complainant about she being not gainfully employed maintained by her relatives for all these years. The learned Revisional Court thus has come to the conclusion that the said evidence is not sufficient to grant full backwages and accordingly, the judgment passed by the Labour Court was modified whereby 30% backwages from the date of termination were granted to the complainant. Present case is not the one where the workman has not lead any evidence about she being not gainfully employed. In fact, categoric statement is made about she being dependent on relatives. Thus it is a fit case to grant backwages. Since, complainant has not taken exception to this judgment, no interference is called in the order of grant of 30% backwages to the complainant.

11. In view of above discussion, there is no justification to cause interference in the impugned orders. As such, the Petition

stands dismissed.

(R. M. JOSHI)
Judge

dyb