



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1959 OF 2022

Pandurang Tukaram Dhumse

VERSUS

Shri Saibaba Sansthan Vishwasta Vyavastha Thr Its Chief Executive
Officer

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

CORAM : R. M. JOSHI, J.

DATE 12th NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to the judgment and order passed by the Labour Court granting reinstatement but refusing back wages. Revision filed against the said order before the Industrial Court came to be dismissed. Hence, this petition.

2. Perusal of the petition shows that the petitioner is challenging the order passed by the Labour Court as well as the Industrial Court only to the extent of back wages.

3. Learned counsel for the petitioner has drawn attention of the Court to the order impugned wherein according to him the learned Labour Court has failed to grant consequential benefit pursuant to the order of reinstatement, which according to him is not permissible in law. To support of his submission he placed reliance on the judgment of this

Court in case of *Veronica Kashinath Pandit Versus Shri Sai Baba Sansthan Vishwastha Vyavastha in Writ Petition No. 9047 of 2019*.

4. It is his his submission that as per the said judgment the consequential benefits or incidental benefits to the reinstatement ought to have been granted by the Labour Court. He further placed reliance on two more judgments of this Court to support of his contention of grant of back wages claiming that in the similar set of facts, relief was granted.

5. At the outset it needs to be recorded that in the present petition only issue of refusal of back wages is under challenge and refusal of consequential benefits is not taken exception to. Thus, this Court finds no reason to entertain any other submission made on behalf of the petitioner except on the point of back wages. Even otherwise perusal of the judgment in case of *Veronica Kashinath Pandit* (supra) indicates that this Court by applying parity has granted consequential benefits to the petitioner therein. The case in hand does not involve any such facts nor there is any challenge with regard to the refusal of continuity of service. Hence, in considered view of this Court the said judgment would not come to the aid of petitioner.

6. On the point of back wages a specific query is made by this Court to the learned counsel for the petitioner as to whether the

petitioner has made at least a statement before the Court at first instance about being not gainfully employed. The answer to this query is negative. The Hon'ble Supreme Court in case of ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and another, (2013) 10 Supreme Court Cases 324*** has held that it is the obligation on the part of an employee to make statement before the Court at first instance that he is not gainfully employed.

7. There is a shift in the view of the Hon'ble Supreme Court on the point of grant of back wages to an employee after holding his termination as bad. The earlier view was to grant back wages automatically on direction of reinstatement. However, now initial burden is on the employee to prove that he was not gainfully employed during relevant period. Since, there is a limitation to discharge negative burden, it is sufficient for the employee/workman to make a statement before the Court of first instance that he is not gainfully employed. The onus thereafter, would shift upon the employer to prove otherwise. It would also be fruitful to refer to the latest judgment of Hon'ble Supreme Court in case of ***Ramesh Chand vs Management Of Delhi Transport Corporation, 2023 LiveLaw (SC) 503*** wherein it is held thus:

"7. The only question before us is whether the Labour Court was justified in denying relief of back wages. In the case of National Gandhi Museum v. Sudhir Sharma¹, this Court held that the fact whether an employee after dismissal from

service was gainfully employed is something which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, 1872, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden. However, in what manner the employee can discharge the said burden will depend upon on peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since, it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer."

8. In view of the above position of law in absence of any statement made by petitioner before Labour Court about he not being gainfully employee question of granting back wages does not arise.

9. This Court therefore finds no merit in the petition. Hence, petition is dismissed.

(R. M. JOSHI, J.)

ssp