



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9625 OF 2022

Zilla Parishad, Latur

.. Petitioner

versus

Satyaprem s/o Manikrao Pawar

.. Respondent

Mr. U. B. Bondar, Advocate for the Petitioner.

Mr. H. V. Patil, Advocate for the Respondent.

WITH
WRIT PETITION NO. 9650 OF 2022

Zilla Parishad, Latur

.. Petitioner

versus

Satyaprem s/o Manikrao Pawar

.. Respondent

Mr. U. B. Bondar, Advocate for the Petitioner.

Mr. H. V. Patil, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 9th JULY, 2024.

PER COURT :

1. These Petitions take exception to the order dated 07.04.2022 passed by the Industrial Court, Latur in Revision Petition ULP No. 3/2020 and 7.2020 filed against order passed by the Labour Court dated 20.01.2020 in Complaint ULP No. 65/2010.

2. Parties are referred to as Complainant and Zilla Parishad for the sake of brevity.

3. Facts which lead to filing of the present Petitions are recorded in brief as under :-

Complainant being aggrieved by dismissal from service with effect from 16.01.2009 has filed complaint ULP No. 65/2010. It is the contention of complainant that he was appointed as Gram Sevak and at the relevant time was posted at Village Panchayat Sonkhed Mankhed with effect from 13.07.2007. It is his submission that initially he was appointed on contract basis for a period of three years by order dated 01.10.2005 and he continuously worked on the said post. It is alleged in the complaint that a show cause notice was issued against him by the Zilla Parishad in respect of his alleged negligence in conducting Gram Sabha on 27.11.2007. It is contended that inquiry into the said allegation was conducted by the Block Development Officer wherein it was not found that the complainant has not committed any negligence. Thereafter the Block Development Officer was called upon to make further enquiry. Pursuant to the said enquiry, notice dated 03.12.2008 was issued

against the complainant which was replied by him on 10.12.2008. Pursuant thereto, order dated 16.01.2009 came to be issued dismissing him from the services of Zilla Parishad. With these averments, complaint is filed with a prayer to re-instate him in the service with continuity in service with effect from 16.01.2009 with full backwages.

4. Zilla Parishad appeared in the complaint and filed written statement opposing the complaint. It is the case of Zilla Parishad that the complainant is appointed on contract basis and that his entry in the service is not in accordance with the norms. Zilla Parishad has reiterated the allegations against the complainant. It is specifically contended that since the complainant was appointed on contract basis, it was not necessary for Zilla Parishad to conduct any departmental enquiry against him before taking any action of termination.

5. The learned Labour Court framed following issues :-

1. Does the complainant proves that the respondent has engaged in unfair labour practice described in item 1

of Sch. IV of MRTU & PULP Act and in result of which, he has terminated service of complainant ?

2. Whether complainant is entitled for relief as sought for ?

6. Both sides led evidence and complaint ULP No. 65/2010 came to be decided by order dated 20.01.2020 whereby it is held that the Zilla Parishad has engaged in unfair labour practice and the order of termination dated 16.01.2009 is set aside. Labour Court has granted compensation of Rs. 10,000/- instead of re-instatement and backwages. Both Zilla Parishad as well as complainant being aggrieved by said order, preferred revision applications before the Industrial Court. These revisions came to be decided by order dated 07.04.2022. The Revisional Court has set aside the order passed by the Labour Court to the extent of not granting re-instatement with full backwages and granted the said relief. Hence, these Petitions.

7. Learned counsel for Zilla Parishad submits that the learned Industrial Court has committed error in not considering the scope of complaint filed before the Labour Court as it was only for the purpose of challenging order of termination. It is submitted that the

findings recorded by the Industrial Court in exercise of revisional powers are not sustainable as the Court has proceeded to practically hold that the complainant is regularised in service. It is also submitted that while granting re-instatement and backwages no reasons are recorded and as such the order deserves interference.

8. Learned counsel for complainant opposed the said submission by drawing attention of the Court to the factual matrix of the case. According to him, there is enquiry conducted by the Block Development Officer which indicates that the allegations made against the complainant about fabrication of document has not been proved. It is his submission that once such finding is recorded by the authority, there was no reason for any further enquiry being conducted by the Deputy Block Development Officer. It is his submission that admittedly the parties are governed by the Provisions of Maharashtra Zilla Parishad Service Rules, 1964 and in absence of conducting any enquiry therein, question of sustainment of order of termination does not arise. He has further argued that the learned Industrial Court though has made certain observations with regard to regularisation of the complainant, however the same are in the context of findings recorded by Labour Court regarding

non-compliance of Section 25F of the Industrial Dispute Act. Thus, it is his submission that no error can be found in the said observation. As far as issue of back wages is concerned, he placed reliance on pleadings in the complaint about he not being gainfully employed after his termination from service. To support his submission, he placed reliance on judgment of the Hon'ble Supreme Court in case of Pradeep s/o Rajkumar Jain vs. Manganese Ore (India) Limited & others, **2022 ALL SCR 566**. Finally, it is argued that in exercise of writ jurisdiction under Article 227 of Constitution of India, the finding of fact recorded by the Court below need not be interfered with.

9. There cannot be any dispute about the fact that complaint ULP No. 65/2010 was filed by the complainant challenging the order of termination dated 16.01.2009. It is claimed therein that the said order is illegal and hence not sustainable. Considering the pleadings of the parties, Labour Court framed issue as to whether on account of termination of service of the complainant, Zilla Parishad is engaged in unfair labour practice and as to what relief the complainant is entitled. It is thus clear that before Labour Court the issue of regularisation of complainant in service was not involved. In

the light of this fact, if the observations of Industrial Court made in paragraph No. 21 of the impugned order are considered, then it seem that the Industrial Court has held that the complainant has been regularised in service. Moreover, for the purpose of making these observations, the Industrial Court has relied upon letter dated 30.12.2008. The said letter is placed before this Court and bare perusal of said letter indicates that the said letter was only giving information of the concerned employees who were confirmed in the service. Admittedly, there is no confirmation/regularisation order passed by the authority in favour of the complainant but Industiral Court observes so. Having regard to the nature of complaint and the issues involved therein, the findings recorded by the Industrial Court in exercise of revisional jurisdiction are not in consonance with law.

10. Industrial Court has transgressed its jurisdiction under Section 44 of the Act to decide the issue of regularisation which was never an issue for consideration before Labour Court. Moreover the material on record considered for the purpose of recording such findings does not support such conclusion. Learned Industrial Court has mis-read the document giving information of workman as order

of regularisation. In such circumstances, having regard to the nature and scope of revisional Court, such findings cannot be sustained.

11. As far as grant of relief of back wages is concerned, Industrial Court has not whispered anything with regard to the pleadings of the complaint about gainful employment. It is not an empty formality that the Court concerned is required to record finding to that effect but it is solemn duty of Court, to come to conclusion that during intervening period, workman was not gainfully employed. Needless to say that Court is required to record reasons for grant of back wages. In this regard reference can be made to judgment of 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**, wherein the Hon'ble Supreme Court has culled out propositions with regard to payment of back wages, relevant portion of which reads thus :-

38.1 In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the

length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

*38.4 * * **

*38.5 * * **

*38.6 * * **

*38.7 * * **

These observations of Hon'ble Supreme Court clearly show that it is necessary for the adjudicating authority to taken into consideration pleadings of workman/employee before granting back wages. In the instant case, the order impugned passed by the Industrial Court makes absolutely no reference in this regard before granting back wages to the workman. It seems that the order to that effect has been passed mechanically and hence the same cannot sustain.

12. As far as jurisdiction of this Court under Article 227 of Constitution of India, no doubt there is substance in the contention of learned counsel for complainant that ordinarily findings recorded on facts by the Courts below are not to be interfered with by this Court. However, such principle would not apply in case where there is error of law committed by the Court while passing impugned order. As observed hereinabove, Industrial Court has transgressed its jurisdiction and recorded finding to the effect that complainant is a regular employee of Zilla Parishad that too on apparent misreading of evidence on record. So also, law laid down by Hon'ble Supreme Court has not been taken into consideration while granting back

wages to the complainant. Thus, it is fit case to cause interference in order impugned in these Writ Petitions.

13. Having regard to above discussion, the order passed by the Industrial Court is set aside. Revision Petition ULP No. 3/2020 and 7.2020 are relegated back to the Industrial Court for decision afresh by keeping in mind relevant provisions of law and the scope of complaint. Needless to say that all issues are kept open. Observations made by this Court in this Petition are restricted for decision of this Petition and Industrial Court shall not get influenced by the same while deciding Revisions on merits. In view of the fact that the original proceeding is of the year 2008 and considering the nature and scope of revision, the revisional Court is directed to decide the revisions within six months from today.

14. Petitions stand allowed in above terms.

(R. M. JOSHI)
Judge

dyb