



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 11491 OF 2010

Bharat Sanchar Nigam Ltd.,
Telegraph Office, D.T.O. Building,
Ahmednagar.
(Through its General Manager).

....Petitioner

Versus

Raju s/o. Vishnu Chandne,
Age 37 yrs., Occu. Nil,
R/o. Pimpalgaon Landga,
Post Mehekari,
Tq. & Dist. Ahmednagar.

....Respondent

Mr. V.S. Bedre, Advocate for the petitioner.

Mr. A.D. Sugdare, Advocate for respondent.

CORAM : ARUN R. PEDNEKER, J.
DATED : 14/03/2024

JUDGMENT :

1. Heard the learned counsel for the respective parties.
2. By way of present writ petition, the petitioner challenges the judgment and award dated 18.8.2010 passed by the Labour Court, Ahmednagar in Ref. IDA No. 37 of 2005. The Labour Court has rejected the prayer of the respondent herein for reinstatement with continuity in service along with the backwages. However, the reference court has partly allowed the reference by declaring the action of the petitioner as illegal in terminating the service of present respondent and has granted compensation of Rs.10,000/- to the respondent in lieu of reinstatement with continuity in service and backwages. Aggrieved by the impugned order, the present writ petition is filed by the petitioner.

3. In the instant case, the respondent worked with the petitioner as Telegram Messenger from 28.2.2001 on contract basis. The respondent used to distribute telegrams in specified area. The said work was of regular nature for the whole year. Respondent was terminated from service on 13.4.2004. At the relevant time, respondent was getting wages of Rs.60/- per day. The said order of termination was challenged before the Labour Court by the respondent. The Labour Court has formulated following issues and answer those issues as follows :-

Issues	Findings
1. Does the party No. 2 prove that the party No. 1 has terminated his service without following the due process of law ?	Yes
2. If yes, does he further prove that he is entitled for the relief as the claimed in the statement of claim ?	Partly yes, only to extent of award of compensation quantified as per final order.
3. What award ?	Partly answered in the affirmative.

4. In para 18 and 22 of the impugned judgment and award, the Labour Court rendered findings as under :-

"18. It can be also seen from the cross-examination of the said witness Shaikh Haidubhai Nurabhai para 5 page 10 that he has admitted the facts that the party No. 2 has done the work of distribution of telegram from 28.1.2001 to 13.5.2004. It necessarily follows that he has worked for more than 240 days during every year.

19.

22. So far as the facts and circumstances of the case are concerned as per documentary and oral evidence on record and in view of the respective authorities relied upon by both sides it can be seen that it is an admitted position that the party No. 2 was engaged for the work of distribution of telegram of daily wages and said engagement was through the agency of cooperative Credit Society, payment was made to the party No. 2 on the basis of telegram delivered by him

pere day at the end of the month as per the agreed rate. Though the payment was made by the Cooperative Credit Society bills were submitted to the party No. 1 and the Account's Officer of party No. 1 used to make payment as per the bills. Therefore, I hold that the party No. 1 is required to be considered as a principal employer and Cooperative Credit Society had merely acted as an agency to work out the scheme of distribution of telegrams through its members or through needy persons. In view of the above, I also hold that the objections taken by party No. 1 that the Cooperative Credit Society ought to have been made party in this proceeding do not survive. As per the documentary evidence on record it has been proved by party No. 2 that he had worked for more than 240 days prior to termination of his service. His services were continuous from the year 2001 to 2004. Although the Cooperative Credit Society had offered a cheque of Rs. 1950/- as a retrenchment compensation alongwith retrenchment notice dtd. 13.6.2005 and said notice as well as amount of compensation was not accepted by the party No. 2, I am of the opinion that the said act of society can not be considered as proper and substantial compliance within the provisions of Sec. 25 (F) of the Industrial Disputes Act because it was merely acting as an agency of party No. 1. It has come in the cross-examination of witness Shri Shaikh Haidubhai Nurabhai vide Exh. C-20 that the party No. 2 has worked from 28.2.01 to 13.5.04 and done the job of distribution of telegrams and that he has rendered the services for more than 240 days every year. He has also admitted that the work of distribution of telegram is continued even after the termination of services of party No. 2 through some other agency. Considering this documentary and oral evidence on record I hold that the party No. 2 has proved issue No. 1 in this case that his services were illegally terminated by party No. 1 without following the legal procedure. Issue no. 1 is answered in the affirmative accordingly."

5. Labour Court passed the judgment and award on 18.8.2010, the operative part of which is as under :-

"AWARD

- 1) The reference is partly allowed.
- 2) It is hereby declared that the action of the management of Telegraph office, Ahmednagar in terminating the services of party No. 2 w.e.f. 13.5.04 is not legal and justified. It is therefore, set aside.

3) The prayer for reinstatement of party No. 2 with continuity in service alongwith back wages is hereby rejected. However, the party No. 1 is directed to pay an amount of compensation of Rs.10,000/- to party No. 2 in lieu of reinstatement with continuity in service and back wages.

4) Four copies of award be sent to Ministry of Labour, Govt. of India, Mantralaya, New Delhi for publication.

5) No order as to cost."

6. The Labour Court declared that respondent was illegally terminated, however, instead of granting continuity in service along with back wages, compensation amount of Rs.10,000/- was granted to the respondent, in lieu of reinstatement with continuity in service and back wages. The said order of granting compensation is challenged in the present writ petition.

7. Having perused the judgment of the Labour Court, I do not see any error or unreasonable award is passed in the matter. This petition is pending in this Court from the year 2010. Fifty per cent amount of compensation granted by the Labour Court is deposited in the Court. It is settled position that writ court should not reappreciate the evidence again. In view of the same, the writ petition is dismissed. Respondent is at liberty to withdraw the amount deposited in this Court.

[ARUN R. PEDNEKER J.]

SSC/