

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 13889 OF 2024****Tanaji Shankar Anuse****....Petitioner****V/s.****Maharashtra Rajya Doodh Sahakari
Mahasangh Maahananda Dudh Shala****....Respondent**

Mr. Y. B. Lengare, for the Petitioner.

CORAM : SANDEEP V. MARNE, J.**Date : 9 OCTOBER 2024.****P.C. :**

1) The petition challenges Award dated 12 April 2024 passed by 10th Labour Court, Mumbai answering the Reference partly in the affirmative and awarding lumpsum compensation of Rs.10 lakh to Petitioner in lieu of reinstatement and backwages. The Petitioner is aggrieved by non grant of reinstatement with full backwages and has accordingly challenged the Award dated 12 April 2024.

2) I have heard Mr. Lengare, the learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

3) It appears that the Petitioner was in employment of Respondent on the post of Junior Clerk since 2 February 2000.

He drew consolidated pay of Rs.5,000/- per month upto 13 September 2004 and by order dated 14 September 2004, he was absorbed in the services of Respondent on the post of Junior Clerk in the pay scale of Rs. 3200-85-4900.

4) It appears that on allegation of unauthorized absence from 1 October 2007 till 28 November 2008, inquiry was shown to have been conducted against the Petitioner and after the charge was held to be proved, order dated 20 July 2009 is passed dismissing him from service. The dismissal order dated 20 July 2009 became subject matter of challenge in Reference (IDA) No. 38 of 2015. The Labour Court framed preliminary issues of fairness in the inquiry and perversity in the findings of the Enquiry Officer and delivered Part – I Award dated 7 November 2019 holding that the inquiry held against the Petitioner was fair and proper and that the findings of the Enquiry Officer are not perverse. Order dated 7 November 2019 on preliminary issues became subject matter of challenge before this Court in Writ Petition No. 5356 of 2021. This Court allowed the Petition by Judgment and Order dated 6 June 2024 setting aside the Part – I Award dated 7 November 2019 and holding that the inquiry was not conducted in accordance with the principles of natural justice. This Court held that the management recorded statements of 10 witnesses without affording any opportunity of cross-examination to the Petitioner. This Court awarded cost of Rs.50,000/- to the Petitioner while allowing Writ Petition No.5356 of 2021.

5) Once this Court held the inquiry to be unfair and set aside Part-I Award dated 7 November 2019, the Labour Court ought to have granted an opportunity to the Respondent-employer to lead evidence before it to prove the charges. However, the Labour Court proceeded to consider only the issue of reinstatement of the Petitioner by delivering Part-II Award dated 12 April 2024. The Labour Court has declined the relief of reinstatement or backwages and has instead awarded lumpsum compensation of Rs.10 lakh to the Petitioner in lieu of reinstatement and backwages.

6) It appears that the dismissal order of the Petitioner is rendered illegal on account of technical reason of the management not granting opportunity of cross-examination of 10 management witnesses to the Petitioner. The exoneration of the Petitioner from the charge is not on merits. Perusal of documents produced on record would indicate that the Petitioner was issued several show cause notices about non-performance of duties. The Respondent was allegedly absent from service from 1 October 2007, which led to conduct of inquiry against him and issuance of final dismissal order dated 20 July 2009. Though the Petitioner was dismissed from service on 20 July 2009, he made the demand for reinstatement for the first time on 11 July 2013 i.e. after delay of 4 long years. Demand dated 11 July 2019 led to making of order of Reference dated 16 March 2015. Having slept over his rights for over 4 years in not raising any demand in respect of his reinstatement, Petitioner cannot be awarded backwages for the said period of 4

years. Even otherwise, the relationship between the parties appears to be unsavory on account of long litigation that has ensued between them. In that view of the matter, the labour Court has rightly denied the relief of the reinstatement as well as backwages. Even otherwise Petitioner is not entitled to any backwages in respect of the period from 20 July 2019 till 11 July 2013 when he did not take any steps to challenge his dismissal order. Petitioner has not even placed on record the exact figure of his last drawn wages. However, from the order dated 14 September 2004, it appears that he was placed in the pay-scale of Rs.3200-85-4900. In that view of the matter, award of lumpsum compensation of Rs.10 lakh awarded by the Labour Court appears to be just and proper. Mr. Lengare has relied upon Judgment of the Apex Court in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) & Ors.*** 2014 AIR SC (Supp) 121 in which the Apex Court as held in paragraph No. 17 as under:-

17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that

the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

In my view the Judgment of the Apex Court in ***Deepali Gundu Surwase*** would not assist the case of the Petitioner. Considering the peculiar facts and circumstances where the dismissal order is set aside only on account of technical ground of violation of principles of natural justice together with the fact that the Petitioner slept over his rights for over 4 years and did not file any proceedings until raising of demand on 11 July 2013. I therefore do not find any reason to interfere in the impugned order dated 12 April 2024.

7) The Writ Petition is accordingly dismissed. There shall be no order as to costs. It is however clarified that in the event Respondent-Employer has also challenged the Award dated 12 April 2024, its challenge shall be decided on its own merits without making any reference to the observations made in the present order.

[SANDEEP V. MARNE, J.]