



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5689/2019

Dinesh Babanrao Naik .VS. NMC, Nagpur and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. U. A. Patil, Advocate for petitioner.

Mr. S. N. Bhattad, Advocate for respondent No.1.

CORAM : ANIL L. PANSARE, J.

DATE : 29.07.2024

Heard.

2. The petitioner was appointed as Driver on contract basis with effect from 19.12.1991. As per appointment order, petitioner was appointed on monthly honourarium of Rs.450/-.

3. The services of the petitioner were terminated in the year 1991. He challenged the termination before the Labour Court, which was pleased to dismiss the complaint. The petitioner then filed revision before the Industrial Court, which was pleased to allow the revision and the complaint as well. The Industrial Court vide award dated 17.11.1998, directed the Municipal Corporation, Nagpur to reinstate the petitioner with full back-wages and continuity of service.

4. The Municipal Corporation has, for the period from the date of termination of service, till the date of award, paid the amount payable under the Minimum Wages Act, 1948 which, admittedly, is something more than the amount of honourarium agreed to be paid to the petitioner.

5. The petitioner was of the view that the terms 'Full Wages' and 'Continuity of Service', would mean the payment as permissible under the pay scales in terms of the Maharashtra Civil Services Rules, 1981 and, accordingly, approached the Industrial Court under Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, for recovery of wages. The Industrial Court dismissed the claim by assigning following reasons.

"8] As regards the remaining claim, it has sufficiently come on record that the applicant was out of employment due to termination since 1/03/1993 to 26/01/1999 and as per the order of the court, the applicant was entitled for full backwages during this period. According to the opponents at the time of termination the applicant was daily wages employee and I have observed earlier that, though the continuity of service was given to the applicant, still the applicant remained on daily wages during the period of unemployment since 26/01/1999 as such the applicant was/is entitled for full backwages as he was getting wages as daily wage employee.

9] I have gone through the decision of our Bombay High Court in **Executive Engineer, PWD, Pune and another Vs. S.P. Rokade, 2012 (5) Mh.L.J. 723 and Bhandara District Central Co-operative Bank Ltd. Vs. Member, Industrial Court, Bhandara and another 2016 (3) Mh.L.J. 240 (Bombay High Court)** relied on behalf of the opponents.

In earlier decision it has been appreciated that,

"The concept of "continuity of service" cannot be equated with the right of permanency, if termination is contrary to the provisions and without following the due procedure of law. The order of reinstatement needs to follow, that itself

in no way means the final decision of rights of permanency, if any. That itself cannot mean that the employees get permanency for all the time to come, basically in the facts and circumstances of the case. Once the reinstatement order and/or continuity of service is directed, the Department and/or employer, in a given case, still entitled to take action by following the due procedure of law, so also the employees to claim permanency."

In the latter case it has been observed that,

"Merely because Courts have granted reinstatement and continuity in service after setting aside order of retrenchment on ground of violation of section 25-F, it does not follow that the complainants gets regularisation in service."

10] In view of the fact and circumstances of the case coupled with the decisions discussed above, in my opinion the applicant is not entitled for any other claim except the wages on daily wages which he was getting at the time of termination."

6. As could be seen, the Industrial Court has considered the judgment passed by this Court in which the concept of continuity of service has been duly explained. This Court has categorically held that merely because the Court has granted reinstatement and continuity in service after setting aside the order of retrenchment on the ground of violation of Section 25-F, it does not follow the complainant's regularization in service.

7. In the present case as well, the order of termination was set aside and the Municipal Corporation was directed to reinstate the petitioner with continuity of service and back-wages. The back-wages would mean the daily wages as were permissible at the relevant time.

8. The Industrial Court has rightly applied the law while dismissing the application. No interference is called in the writ jurisdiction. The petition, therefore, is dismissed. No order as to costs.

(Anil L. Pansare, J.)

Kahale