



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

WRIT PETITION NO.6022/2013

1. Executive Engineer,
Upper Wardha Canal Division No.1,
Dhamangaon Railway, Amravati.
2. Sub-Divisional Engineer,
Upper Wardha Canal Sub Division,
15/9, Deogaon, Tq. Dhamangaon Rly.,
Dist. Amravati.

.....PETITIONERS

...V E R S U S...

Arun Haridas Deshmukh,
aged about 47 years, r/o Upper Wardha
Colony, Deogaon, Tq. Dhamangaon Rly.,
Dist. Amravati.

...RESPONDENT

Mrs. U. A. Patil, Advocate for petitioners.
Mr. N. R. Saboo, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATED :- 24.07.2024

ORAL JUDGMENT

Heard Mrs. U. A. Patil, learned counsel for the
petitioners and Mr. N.R.Saboo, learned counsel for the respondent.

2. The respondent was appointed as Daily Rated Labour
and continued in service from 01.10.1987 till 25.10.1991. His
services were terminated on 19.10.1991. He challenged the
termination vide Complaint (ULP) No.235/1991. The Labour
Court, vide award dated 24.08.2005, quashed and set aside the
order of termination and directed the petitioners to reinstate the
respondent with continuity of service and full back wages.

3. The petitioners assailed the said award before the revisional court in Revision (ULPN) No.38/2005. The revisional court i.e. Industrial Court dismissed the revision on 22.07.2013. The petitioners are aggrieved by the orders passed by both the courts below and assailed the same before this court.

4. I am informed that consequent to order dated 18.06.2014 passed by this Court granting interim relief against payment of back-wages but refusing to stay the directions of reinstatement by the courts below, the respondent has been reinstated and is about to retire.

5. Accordingly, counsel for the petitioners has restricted her argument on the point of payment of back-wages.

6. Having heard both sides on the aforesaid point, it appears that the respondent has neither pleaded nor made a statement before the courts below that he was not gainfully employed in the intervening period i.e. from the date of termination till the order of reinstatement.

7. The counsel for the petitioners submits that in absence of the pleadings or statement, the respondent failed to discharge initial burden and, therefore, the petitioners had no reason to

plead and prove that the respondent was gainfully employed.

8. Mrs. Patil, learned counsel for the petitioners, has relied upon judgment in **Allahabad Bank and Ors. Vs. Avtar Bhushan Bhartiya, (2022) 13 SCC 202**, wherein the Apex Court has held thus:

“36. The reliance placed upon the decision in Pawan Kumar Agarwala v. SBI (2015) 15 SCC 184, may not also be of help to the employee. It is a case where this Court applied the propositions laid down in Deepali Gundu Surwase (2007) 2 SCC 433. This Court found that there was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same.”

9. As could be seen, in the first instance there is an obligation on the part of the employee to plead that he is/was not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish that the employee was gainfully employed in intervening period.

10. In the present case, there is no dispute that the employee did not plead or make a statement during the evidence or otherwise that he was not gainfully employed in the intervening

period. The complaint was filed immediately after issuing termination order. Therefore, one would not expect pleading on this point. However, a statement ought to have been made either in the evidence or otherwise. Having not done so during the entire trial, the respondent will not be entitled for full back-wages as ordered by the Labour Court. This part of the finding, therefore, is liable to be quashed and set aside.

11. The question that requires answer now is whether from the date of order passed by the Labour Court, will the respondent be entitled for wages till the date of his reinstatement.

12. The Labour Court has directed the petitioners to reinstate the respondent with continuity of service and full back-wages. This order was not stayed by the Industrial Court. Ultimately, the revision was dismissed. There is, thus, no reason why should the petitioners not reinstate the respondent. Subsequently, when the instant petition was filed, this Court vide order dated 18.06.2014, refused to grant interim relief against the direction of reinstatement and, therefore, the respondent has been reinstated and continued in service.

13. The counsel for the petitioners submits that there is nothing on record that the respondent was not in gainful

employment subsequent to 24.08.2005 i.e. the date of passing of order by the Labour Court. This contention has been rightly countered by the counsel appearing for the respondent. He submits that once the Labour Court has directed the petitioners to reinstate the respondent and when the petitioners failed to get interim relief before the revisional court, the petitioners had no other option but to reinstate the respondent. Having not done so, the case will fall in the category of non compliance of order and, therefore, there arises no question of respondent making out a case that he was out of employment or that he was not gainfully employed.

14. I find substance in the aforesaid submissions. The petitioners were under an obligation to reinstate the respondent which naturally would have followed by payment of wages. The petitioners did not. Consequently, wages were not paid. The case, therefore, falls in the category of non compliance of order and, therefore, the employee will not be under obligation to show that he was not gainfully employed even after getting order in his favour. The requirement of pleading and/or making statement as regards employee not gainfully employed is applicable in the pending dispute and not after dispute is adjudicated by the Courts/Tribunal.

15. The respondent, therefore, is entitled for the wages for a period from 24.08.2005 till the date on which he was reinstated. The award dated 24.08.2005 passed by the Labour Court is modified accordingly. Rest of the award is kept intact. Needless to say that the award passed by the Industrial Court stands quashed and set aside.

Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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