



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

Writ Petition (WP) No. 126 of 2024

Premdas Ambadas Bhagat

Versus

Agriculture Produce Market Committee, Kalamb, Yavatmal

With

Writ Petition (WP) No. 6656 of 2022

Agriculture Produce Market Committee, Kalamb, Yavatmal

Versus

Premdas Ambadas Bhagat

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

WP No. 126 of 2024

Shri Abhay Sambre, Advocate for the petitioner.
Ms. Isha Thakre, Advocate h/f Ms. Shaad Mirza,
Advocate for the respondent.

WP No. 6656 of 2022

Ms. Isha Thakre, Advocate h/f Ms. Shaad Mirza,
Advocate for the petitioner
Shri Abhay Sambre, Advocate for the respondent.

CORAM : N.R.BORKAR, J.

DATED : 21st OCTOBER, 2024.

Both these petitions are filed against one and
the same judgment and order dated 14th March, 2022
passed by the Labour Court in reference IDA No. 15 of

2015. Both these petitions are therefore being disposed of by this common order.

2. Premdas Ambadas Bhagat, a petitioner in Writ Petition No. 126 of 2024 was working as a peon with Agricultural Produce Market Committee (APMC), Kalamb. By order dated 22nd September, 2012, the APMC terminated his services. According to him, he was illegally terminated and thus reference was made to the Labour Court under Section 10 of the Industrial Dispute Act, 1947.

3. By the impugned judgment and order, the learned Labour Court has decided the said reference. The operative part of the judgment and order passed by the learned Labour Court reads thus:

- “1. The reference is answered in partly affirmative.
2. Party No.1 shall reinstate the party No.2 on the previous post with continuity of service but without back wages within two months from the publication of award.
3. Copies of award be sent to Additional Labour Commissioner, Nagpur for publication.
4. Conciliation proceedings be sent to Additional Labour Commissioner, Nagpur for publication.
5. Parties to bear their respective costs.”

4. The APMC has filed the Writ Petition No. 6656 of 2022 against the order of reinstatement, whereas the employee has filed the Writ Petition No. 126 of 2024 against the order refusing the back wages.

5. I have heard the learned counsel for the parties.

6. The learned Labour Court has recorded following findings.

10. In the case at hand, party No.1 has not disputed that party No.2 was working as regular employee on the post of peon. Shri Deshmukh testified that after registration of Crime No. 103/2011 against party No.2, he was suspended as per order dated 22/10/2011. Through his evidence, muster roll of party No.2 for the period from January 2011 to March 2013 has been placed on record. It is not disputed fact the crime for the offences punishable under section 302, 304-B r/w 34 of I.P.C was registered against the party No.2 and he was arrested by the police on 12/9/2011. Party No.2 has testified that his wife died an accidental death and he was falsely implicated in criminal case by his father-in-laws. For the period between 8/9/2011 to 11/9/2011 he was admitted at Shaha Hospital, Yavatmal at indoor patient. The muster roll (Exh. 42) shows that party no.2 was regular in attendance till 6/9/2011. Thereafter he is shown to be absent till the date of termination i.e. 4/10/2012. It is necessary to mention here that as per the letter of party No.1(1) dated 11/1/2008 (Exh.21), the party No.2 has successfully completed his probation period and benefits of permanency were conferred upon him.

11. Shri Deshmukh has specifically admitted that the Jail authority sent documents to party No.1 in respect of crime No. 103/2011. He also admits that party No.2 was terminated on account of his absence. He also admits that they were knowing the fact that party No.2 was in jail. He also testified that notice about the absenteeism was sent to party No.2. Further he admits that neither charge sheet was issued nor enquiry was conducted against the party No.2 regarding his absenteeism. Party No.2 admits that he received the cheque of Rs.30,816/- along with termination order (Exh. 28). It would be proper to mention here that prior till the arrest of party no.2, he was regular in attendance in his duties. The definition of retrenchment under section 2(oo) is as under-

2[(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;

12. In the case at hand party No.2 is shown to be retrenched party No.1. Retrenchment is also a termination of service of employee defined in the above provision. Party No.1 has paid retrenchment compensation, notice pay etc. to party No.2. As such

they have treat service of the party No.2 as continuous service. Otherwise there was reason for party No.1 to comply the mandate of Section 25-F of the I.D. Act. Therefore, it can be safely said that party No.2 was in continuous service prior to his termination. Accordingly, I have answered issue No.2 in the affirmative.

13. Party No.2 has vehemently argued that he was permanent employee of party No.1. There were justified grounds per his absence from duty. The ground of his absence was well within the knowledge of party No.1 in spite of that enquiry was not conducted against him. Therefore party No.1 was indulged in unfair labour practice by exercising its right to terminate party no.2 from service by way of victimization. On the contrary learned advocate for party No.1 argued that party no.2 was lawfully retrenched by the following mandate of I.D.Act. In the case at hand, party No.2 admitted that he received the termination order (Exh.28) along with cheque of Rs. 30,816/-. On perusal of termination order (Exh. 28), it can be gathered that party No.1 has specifically mentioned in the order that party no.2 was arrested and not released on bail. Therefore he has violated the service Rules of A.P.M.C. It is also mentioned in the order that party No.2 was absent from duty for more than one years. Therefore the Director body of party No.1 passed resolution No.2 dated 3/10/2012. As per this resolution, party No.2 terminated from service w.e.f. 4/10/2012.

14. It is clear from the record that prior to his termination notice was not issued to party No.2 for seeking his reply as to why his service shall not be terminated. Admittedly one month salary, 7-days wages and retrenchment compensation is shown to be paid to party No.2 by cheque. An interesting fact to note is that order of termination has been passed on

11/10/2012. On the said date the party No.2 was in jail. His termination order (Exh.28) dated 11/10/2012 shows that party no.2 was terminated w.e.f. from 4/10/2012. It is nowhere mentioned by party No.1 as to when the termination order was served upon party No.2. It is settled legal principle that retrospective termination of the workman is illegal. On this count the termination of party No.2 is illegal. Hence in the light of above discussion, I have answered Issue No.3 in the affirmative.

15. I have discussed issues No.4 and 5 at once, as these issues are interlinked to each other. It has been already held that party No. 2 was in continuous service as a peon with party No.1. The termination of party No.2 by party No.1 is without giving him opportunity and without conducting departmental enquiry. Therefore it is illegal. Hence party No.2 is entitled for reinstatement with continuity of service.

16. Party No.2 has also claimed full back wages. In that regard it is necessary to mention here that party No.2 has to plead and prove that he was not gainfully employed elsewhere after he was terminated. The burden to prove this fact is on the workman. This view is fortified by the judgment of the Apex Court in the case of **M.L.Singla Vs. Panjab National Bank** reported in **(2018) 18 SCC 21**.

17. Party No.2 has nowhere pleaded nor testified that he was not gainfully employed after his termination. Therefore he is not entitled for back wages. Accordingly, in the light of above discussion, I have answered issue No.4 partly in affirmative. The reference is required to be answered in partly affirmative....”

7. No perversity in the judgment and order passed by the Labour Court is pointed out, warranting

interference in the writ jurisdiction. In that view of the matter, both the petitions are dismissed.

[N.R.BORKAR, J.]