



(This order is corrected pursuant to speaking to minutes of order dated 04.03.2025)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5635 OF 2022

Amol Dilip Sable And Others

VERSUS

M/s L G Balakrishnan And Bros. Lts. Through Its Senior
Manager-hr

Mr. A. S. Kulkarni, Advocate for petitioners

Mr. S. V. Dankh, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 27th January, 2025

PER COURT :-

1. This petition is filed essentially with two prayers. One is to set aside the termination effected to **petitioner Nos. 2 and 3** on 01.12.2021. Secondly, the exception is taken to clause No. 6 of the operative part of the judgment and order dated 30.08.2021 passed by Industrial Court, Jalna in Complaint (ULP) No. 112/2017. 1 and 2

2. At the outset, this Court would like to deal with the prayer of reinstatement sought to be made by challenging the order of termination dated 01.12.2021. It is argued on behalf of the petitioner that during the pendency of the previous petition filed by the respondent-management against the same order i.e., order dated 30.08.2021, termination of the service of two petitioners is effected and, therefore, they are entitled for

relief of reinstatement.

3. This contention is opposed by the learned counsel for the respondent on the ground that the validity of termination effected subsequently cannot be challenged in this petition.

4. If it is a case of the petitioner that petitioners are terminated from service against provisions of law or without following due process of law, it is open for them to challenge the said order before the competent forum. In a writ petition, the termination affected by a private employer cannot be taken exception to.

5. At this stage, learned counsel for the petitioners, on instructions seeks withdrawal of the petition to the extent of prayer of reinstatement on the basis of termination order dated 01.12.2021 with liberty to adopt appropriate remedy as provided by law. Petition accordingly stands dismissed as withdrawn to the extent of prayer of reinstatement with liberty as prayed.

6. Moving to the second part of the petition, wherein challenge is raised to clause No. 6 of the impugned order passed by the Industrial Court which is based on the observations made in paragraph 31 that six complainants have no work during the relevant period, principle of "No work, No wage" will apply.

7. Learned counsel for the petitioners submits that the said observations are erroneous as this Court in Writ Petition No. 386/2018 has given an option to the respondent-management either to engage the petitioners and to pay 50% of monthly wages or if they do not wish to engage the petitioners then to deposit the said amount in the Court. This amount was permitted to be withdrawn by the petitioners. It is his contention that since the respondent-management has opted for second option of not engaging the petitioners, the principle of "No work, No wage" cannot be made applicable to them. It is his submission that clause No. 6 of the operative part is based upon the said observations and hence the observations as well as operative part of the order cannot sustain. He also points out that during the pendency of the said petition, the petitioners-workmen did not challenge the said party of the impugned order before this Court.

8. Learned counsel for the respondent-management opposed the petition on the ground that management had challenged the impugned order in this petition before this Court in writ petition No. 345/2022, which was dismissed by the Court. Special leave petition filed by the management before Hon'ble Supreme Court is also dismissed. Thus, it is his submission that once the order passed by Industrial Court has been confirmed by this Court as well as the Hon'ble Supreme Court,

question of causing interference therein does not arise.

9. Though, it is a fact that the respondent-management had challenged the impugned order bearing writ petition No. 345/2022, obviously the said order was challenged to the extent it was against the interest of the management. In the said petition, therefore, there was no question of law going into the issue which is now sought to be agitated by the petitioners/workmen. As rightly pointed out by the learned counsel for the respondent-management that the issue of payment of wages was not involved in the complaint before the Industrial Court as no prayer to that effect was made by the complainant/petitioners-workmen. If it is so, there was no occasion arose for the Industrial Court to make any observations with regard to the principle of "No work, No wage" made applicable to the present petitioners. Passing any order in that regard would be beyond the scope of complaint, so also without giving opportunity to the petitioners herein to meet the said issue. Thus, such findings cannot be sustained. In any case, admittedly, there was option given by this Court in writ petition No. 386/2018 about engaging the workmen and to pay 50% of wages or not to engage them and deposit the wages and when the second option is exercised by the management, it is now not open for the management to claim that this is a case of "No work, No wage". In any case, no such case was even sought to be made out by parties before the Industrial Court.

10. Having regard to these facts, observations made by the Industrial Court with regard to "No work, No wage" cannot sustain. Consequently, clause No. 6 of the impugned judgment and order deserves to be set aside and accordingly set aside.

11. Learned counsel for the petitioner submits that it would be open for the petitioners to claim entire wages for the relevant period. If it is permissible in law, there cannot be prohibition on the petitioner to initiate any such proceedings. If such remedy, **as stated in paragraph 5**, is exhausted within a period of 4 weeks, the issue of limitation shall not be raised nor be entertained. In view of this, petition stands partly allowed in afore-stated terms.

(R. M. JOSHI, J.)

bsj