



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 865 OF 2022

Rangnath Pandurang Thete

VERSUS

Shri Saibaba Sansthanvishwasta Viyavastha Shirdi Thr
Its Chief Executive Officer

...

Mr. P. V. Barde, Advocate for the Petitioner

Mr. S. N. Gaikwad h/f Mr. N. V. Gaware, Advocate for
Respondents

WITH

WRIT PETITION NO. 13994 OF 2019

Shree Saibaba Sansthan Shridi Through Its Chief
Executive Officer

VERSUS

Rangnath Pandurang Thete

...

Mr. S. N. Gaikwad h/f Mr. N. V. Gaware, Advocate for
the Petitioner

Mr. P. V. Barde, Advocate for Respondents

CORAM : R. M. JOSHI, J

DATE : MARCH 20, 2025

COMMON ORDER :

1. These Petitions take exception to the order dated 11.03.2019 passed by the Labour Court, Ahmednagar in Reference IDA No. 03/2015.

2. Parties are referred to as 'Employer' and 'Workman' for the sake of convenience.

3. Writ Petition No. 13994/2019 is filed by the

Employer taking exception to the order of reinstatement with 25% back wages and consequential service benefits from 04.01.2014 till date of superannuation of the workmen on 31.05.2017. Whereas Writ Petition No. 865/2022 came to be filed by the Workman for seeking 100% back wages.

4. The facts, which lead to the filing of these Petitions, can be narrated in brief as under:

Admittedly workman was appointed by the employer in the year 1985. He was made permanent as helper in the year 1989. In 2012 he was arrested for the misconduct connected with Employer. In criminal proceedings initiated against him, he was convicted and sentenced to suffer two years imprisonment. After he was released on parole in the year 2013, he joined services. He thereafter sought leave. Since the leave was not in credit, his leave application was rejected. As the workmen remained absent, initially show cause notice was issued to him alleging misconduct of absenteeism. Charge-sheet also came to be issued which was followed by the Departmental Enquiry against him. On the basis of the report of the Enquiry Officer,

workman came to be dismissed with effect from 04.01.2014.

5. Being aggrieved by the said order of dismissal, Reference IDA No. 03/2015 came to be initiated by the workman. The said proceedings was contested by both sides. Apart from the pleadings, i.e., statement of claim and written statement, parties led oral and documentary evidence before the Labour Court. Labour Court by passing impugned judgment and order directed the continuity of service of the workman with 25% back wages and consequential service benefits till his age of superannuation i.e., 31.05.2017.

6. Learned Counsel for the Employer submits that the record indicates about show cause notice and charge-sheet being issued against workman and due enquiry was conducted against him. By drawing attention of the Court to the enquiry proceedings, it is contended that during the enquiry workman has accepted his absenteeism. It is his contention that fair opportunity was given to the workman to defend himself in the said enquiry. It is his contention that workman's misconduct is proved against the employee and

there is no reason or justification for the Labour Court to cause interference in the said order. It is his further submission on the point of back wages that Labour Court has committed serious error in granting 25% back wages in ignoring fact that once misconduct is proved, the employee is liable for some punishment. On these amongst other contentions, he seeks setting aside of the impugned order.

7. Learned Counsel for the Workman, on the other hand, submitted that the workman in the statement of claim has taken specific plea that in spite of making attempts, he was unable to secure employment and that he was not gainfully employed. It is his contention that the onus has shifted upon the employer to prove that the workman was gainfully employed during the intervening period. As such, refusal of back wages is not justified.

8. From the record, it is clear that the workman was permanent employee of the employer working since 1985. Till his arrest and subsequent conviction, there is nothing on record to indicate that he was ever remained absent. As far the circumstances in which

workman has remained absent were beyond his control and has rightly observed by the Labour Court in the order impugned. Absence, therefore, cannot be considered as willful. Labour Court has further held that the workman was working as helper and there are thousands other employees which has lead to not affecting the regular work of the employer due to his absence. In any case, Labour Court has denied 75% back wages considering the fact that the misconduct has been established against him. The interference is caused in view of the fact that the workman had remained absent for substantial period.

9. Though this Court finds some substance in the contention of the learned Counsel for workman that he has pleaded and proved that he was not gainfully employed after his termination and that onus has shifted upon the employer to prove otherwise. However, at the same time, the workman cannot be permitted to take advantage of his own wrong though the act of the workman was not sufficient to dismiss him from service, denial of back wages to the extent of 75% is fully justified.

10. In view of above discussion, this Court finds no perversity in the impugned order. Hence, Petitions stand dismissed.

(R. M. JOSHI, J.)