

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4337 OF 2010

The Superintending Engineer
Kolhapur Irrigation Circle,
Tarabai Park, Kolhapur

...Petitioner

V/S

Madhukar Gurunath Patil
R/o Tudaye, Taluka Chandgad,
District Kolhapur

...Respondent

Mr. Prashant Kamble with Mr. Suraj V. Gadkari *for the
Petitioner.*

Mr. Sachin H. Kankal *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 30 JANUARY 2025.
PRONOUNCED ON: 06 FEBRUARY 2025.**

J U D G M E N T:

1. Superintendent Engineer of Kolhapur Irrigation Circle has filed the present Petition challenging judgment and order dated 8 March 2006 passed by Labour Court, Kolhapur in Complaint (ULP) No.11 of 1995, by which the Labour Court has directed Petitioner to treat Respondent as having been brought on CRTE with further direction to reinstate/absorb him in service in pursuance of the Government Resolution dated 28 November

1986 by treating his service as continuous from 20 October 1986. The Labour Court has further directed payment of 50% backwages to the Respondent from the date of filing of the Complaint till his reinstatement/absorption. The Revision preferred by the Petitioner is dismissed. However, the period of backwages is altered by the Industrial Court by directing the same to be paid from 12 December 2000 and not from the date of filing of the Complaint.

2. Respondent was a project affected person and came to be engaged as a temporary clerk in Tillari Dam Project with effect from 1 August 1981. He claims to have rendered continuous service until he was retrenched vide notice dated 10 September 1986. By retrenchment notice dated 10 September 1986, about 62 employees were retrenched on the ground of completion of the project. Respondent filed Complaint (ULP) No.251 of 1986 in Industrial Court, Kolhapur challenging retrenchment and claiming permanency. Similar complaints were filed by several other retrenched employees. By a common judgment and order dated 7 September 1986, all the 62 complaints were decided by the Industrial Court and except the complaints of 12 employees, rest of the complaints including that of Respondent were dismissed. So far as the 12 complainants are concerned, they were directed to be taken on Converted Regular Temporary Establishment (**CRTE**) by judgment and order dated 7 September 1989. It appears that some of the employees whose complaints were dismissed by common judgment dated 7 September 1989 approached this Court by filing Writ Petition

No. 5164 of 1989. Respondent was not the Petitioner before this Court in Writ Petition No.5164 of 1989, which was disposed of by this Court by remanding the complaints before the Industrial Court for fresh decision. Though the Petitioner was not a party in Writ Petition No.5164 of 1989, he appeared before the Industrial Court and made an attempt for rehearing of his Complaint (ULP) No.251 of 1986. However, after noticing that Petitioner was not a party in Writ Petition No. 5164 of 1989, the Industrial Court did not entertain Petitioner's request. He accordingly issued demand notice dated 14 January 1994 to the Petitioner for reinstatement and permanency. He also approached the Assistant Commissioner of Labour by letter dated 1 March 1994. However conciliation resulted in failure. Petitioner therefore withdrew his application before the Assistant Labour Commissioner reserving his right to approach the Industrial Court independently. In the above background, Petitioner instituted fresh Complaint (ULP) No.11 of 1995 in Industrial Court at Kolhapur challenging his termination and seeking reinstatement with continuity and full backwages. The Complaint was decided by the Labour Court alongwith Complaints of other employees and by common judgment and order dated 8 March 2006, the Labour Court allowed Respondent's Complaint (ULP) No.11 of 1995 while dismissing the rest of the Complaints. Labour Court found that name of Respondent was included in the letter of Executive Engineer dated 21 November 1988 and that as per said letter, he was to be brought on CRTE. Labour Court therefore held that when Respondent was to be treated as having been brought on CRTE,

his retrenchment was unlawful. Labour Court therefore directed his reinstatement on CRTE with further direction to grant absorption in accordance with Government Resolution dated 28 November 1986 by counting his continuous service from 20 October 1986. The Labour Court further directed payment of 50% backwages from the date of filing of the Complaint i.e. 17 January 1995 till date of reinstatement. Petitioner unsuccessfully challenged Labour Court's order dated 8 March 2006 before the Industrial Court, Kolhapur by filing Revision Application (ULP) No.114 of 2006. However, by judgment and order dated 3 March 2010, Industrial Court dismissed the Revision Application filed by the Petitioner. However, it has modified the date from which backwages are awarded by the Labour Court by directing that the backwages be paid from 12 December 2000 i.e. the date on which delay was condoned in filing the Complaint. Petitioner has filed the present Petition challenging the orders passed by the Labour and the Industrial Courts.

3. This Court admitted the Petition by order dated 13 July 2010 and stayed the impugned orders of the Labour and the Industrial Courts subject to deposit of backwages awarded by the Industrial Court in this Court. Accordingly, an amount of Rs.3,36,503/- has been deposited in this Court by the Petitioner. By order dated 11 March 2020, this Court permitted Respondent to withdraw the amount of backwages subject to provision of security of his agricultural land with an undertaking not to dispose of the same. The Petition is called out for final hearing.

4. Mr. Kamble, the learned counsel appearing for Petitioner would submit that the Labour Court erred in entertaining fresh Complaint (ULP) No.11 of 1995 filed by the Respondent in ignorance of the fact that previous Complaint (ULP) No.251 of 1986 seeking same prayer was rejected on 7 September 1989. That the fresh complaint filed by the Respondent was barred by principle of *res judicata*. That Respondent was not a party to Writ Petition No.5164 of 1989 and did not question dismissal of his Complaint (ULP) No.251 of 1986. That therefore he acquiesced in such dismissal and cannot be permitted to file a fresh complaint for same cause of action. He would submit that the findings recorded by the Industrial Court that Petitioner is not entitled to be brought on CRTE recorded vide judgment and order dated 7 September 1989 has attained finality. He would submit that Respondent is otherwise not in service of the Petitioner since 15 October 1986 and therefore the impugned orders passed by the Labour and the Industrial Courts be set aside.

5. The Petition is opposed by Mr. Kankal, the learned counsel appearing for the Respondent. He would submit that Petitioner suppressed the factum of name of Respondent being included in the Executive Engineer's letter dated 21 November 1988 by which Respondent was to be brought on CRTE. That if correct information was disclosed to the Industrial Court, Respondent's Complaint would also have been allowed alongwith 12 other complainants vide judgment and order dated 7 September 1989.

That Respondent cannot be made to suffer by citing technical reason of *res judicata* when inclusion of his name in Executive Engineer's letter dated 21 November 1988 is an admitted position. He would submit that Respondent is already deprived of opportunity to serve on account of stay granted by this Court and has now attained the age of superannuation. He would submit that the order passed by the Labour and the Industrial Court would enable him to draw at least pensionary benefits. He would therefore pray for dismissal of the Petition.

6. Rival contentions of the parties now fall for my consideration.

7. The case presents unique conundrum where services of the Respondent were terminated on 15 October 1986 and subsequently, he was sought to be brought on CRTE by issuance of letter dated 21 November 1988 by the Executive Engineer. It appears that the other named persons in the letter dated 21 November 1988 were brought on CRTE and Respondent was supposed to be brought on CRTE with effect from 21 October 1986. However, because services of the Respondent were terminated on 15 October 1986, it appears that effect was not given to letter dated 21 November 1988 by the Executive Engineer. Similar was the grievance in respect of 12 complainants whose complaints were allowed by common judgment and order dated 7 September 1989 after noticing that the said 12 Complainants were to be brought on CRTE. It appears that the Industrial Court missed the fact that

Respondent was also to be brought on CRTE with effect from 21 October 1986. Respondent accuses Petitioner of suppressing letter dated 21 November 1988 from the Industrial Court which delivered judgment and order dated 7 September 1989.

8. Ordinarily there could have been no objection to grant of relief of CRTE benefit to Respondent in pursuance of letter dated 21 November 1988. However, Respondent did not challenge dismissal of his Complaint (ULP) No.251 of 1986 vide judgment and order dated 7 September 1989 and acquiesced in its dismissal. There is no denial to the position that the earlier complaint was also for the same benefit of reinstatement and permanency. In such circumstances, it was otherwise impermissible for the Respondent to institute a fresh Complaint of unfair labour practice in the year 1995 once again seeking the same benefit. Therefore, Petitioner prays for dismissal of Complaint (ULP) No.11 of 1995 by citing the technical plea of *res judicata*. However, the present Petition came to be admitted by this Court by order dated 13 July 2010 and has been pending for last about 15 long years. If the Respondent was informed at the time of admission of the Petition that he needed to challenge the judgment and order dated 7 September 1989 rather than filing fresh Petition, he would have taken appropriate steps in that regard. Now it is too late in the day to expect Respondent to set up a challenge to order dated 7 September 1989, which obviously suffered from a glaring error. Since inclusion of name of Respondent in letter dated 21 November 1988 for grant of CRTE status is not under dispute, in my view, it would be appropriate

to ignore the technical objection of *res judicata* considering the background of the Respondent and long pendency of the litigation. Respondent has been litigating since the year 1986 and it has now been almost 40 long years that he is before different courts for espousing his grievance relating to termination and permanency.

9. Conferment of CRTE status would enable the Respondent for payment of pensionary benefits. It appears that similarly placed colleagues of the Respondent were granted CRTE status and later absorbed in service. In my view therefore, similar treatment deserves to be extended to the Respondent as well.

10. The issue that remains is about the intervening period. Respondent is out of service since 15 October 1986. The Labour Court awarded 50% backwages from 17 January 1995 which date was modified by the Industrial Court to that of 12 December 2000. Making the Petitioner pay 50% backwages to the Respondent from 12 December 2000 till 8 March 2006 (date of order of Labour Court) and thereafter 100% wages would put a huge financial burden on the state exchequer. Respondent himself was negligent in exercising correct legal remedy *qua* his grievance and going strictly by the principles of *res judicata*, his fresh Complaint (ULP) No.11 of 1995 ought to have been dismissed. Considering this position, in my view, the backwages payable in respect of the Respondent are required to be restricted to the amount already deposited by the Petitioner in

this Court which is already withdrawn by the Respondent. However, grant of CRTE benefit would enable Respondent to claim pension and pensionary benefits.

11. I accordingly proceed to pass the following order:

a) Judgment and order dated 8 March 2006 passed by Labour Court, Kolhapur in Complaint (ULP) No.11 of 1995 and judgment and order dated 3 March 2010 passed by the Industrial Court, Kolhapur in Revision Application (ULP) No.114 of 2006 are modified to the extent that the claim of Respondent to backwages is restricted to the amount of backwages deposited by the Petitioner in this Court which has already been withdrawn by the Respondent with accrued interest.

b) The direction of the Labour Court for grant of CRTE benefit to the Respondent in terms of Government Resolution dated 28 November 1986 by counting his service with effect from 20 October 1986 is however not disturbed. Respondent shall therefore be deemed to have been brought on CRTE in terms of Kalelkar Award with effect from the due date of his entitlement and shall be entitled to all consequential benefits except backwages. Upon conferment of CRTE status, Respondent shall accordingly be paid all pension and pensionary benefits with effect from the date of attaining the age of superannuation.

c) Beyond the amount already withdrawn by the Respondent from this Court, he shall not be entitled to any other monetary

benefits in respect of his service upto the date of attaining age of superannuation. He will be entitled only pension and pensionary benefits and arrears thereof from the date of attaining the age of superannuation.

d) The arrears of pension and pensionary benefits shall be paid to Respondent within a period of four months.

12. With the above directions, the Writ Petition is **disposed of**. Rule is discharged. No costs.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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by SUDARSHAN
RAJALINGAM
KATKAM
Date:
2025.02.06
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