

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13642 OF 2024

Rajarambapu Patil Sahakari Sakhar
Karkhana Limited

...Petitioner

V/s.

Nitin Vishwasrao Barwade

...Respondent

Mr. Sarthak Diwan *for the Petitioner.*

Mr. Nitin A. Kulkarni *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 28 February 2025.

Judgment pronounced on: 10 March 2025.

Judgment:

1) The Petitioner has challenged this Petition challenging the judgment and order dated 20 July 2024 passed by the Member, Industrial Court, Sangli dismissing the cross-revision applications filed by the employer and employee challenging the judgment and order dated 29 February 2024 passed by the Judge, Labour Court, Sangli. The Labour Court, while partly allowing Complaint (ULP) No.62 of 2015, had set aside the discharge order dated 14 August 2015 and directed the Petitioner -employer to reinstate the Respondent -employee with continuity

of service and 50% backwages. On account of dismissal of cross revisions filed by the employer and employee, the ultimate order under challenge is that of Labour Court directing reinstatement w.e.f. 14 August 2015 with continuity and 50% backwages.

2) Respondent was appointed on the post of Clerk in the Petitioner-sugar factory on 14 February 1997. He filed Complaint (ULP) No.62 of 2015 alleging that he was illegally discharged from service by order dated 14 August 2015 by showing as if his request for voluntary retirement was accepted. He has accordingly filed Complaint for reinstatement in service with backwages. The Complaint was opposed by Petitioner-employer by filing written statement raising a plea that Respondent - employee had tendered application for voluntary retirement. Later the written statement was amended relying on application for voluntary statement dated 4 November 2014. Petitioner claimed that Respondent was relieved from service by accepting his request for voluntary retirement. Both the parties led evidence in support of their respective pleas. After considering the pleadings, documentary and oral evidence, the Labour Court proceeded to allow the Complaint partly by holding that discharge order dated 14 August 2015 was illegal and the same was set aside. The Labour Court directed Petitioner-employer to reinstate the Respondent in its original post with continuity of service and 50% backwages during the intervening period.

3) Petitioner filed Revision Application (ULP) No.5 of 2024 challenging Labour Court's order dated 29 February 2024. The Respondent-employee also filed Revision (ULP) No.6 of 2024 to the extent of denial of 50% backwages. The Industrial Court dismissed both the Revisions by judgment and order dated 20 July 2024 and has thus confirmed the decision of the Labour Court. Aggrieved by the orders passed by the Labour Court and Industrial Court, only Petitioner-employer has filed the present Petition.

4) I have heard Mr. Diwan, the learned counsel appearing for the Petitioner and Mr. Kulkarni, the learned counsel appearing for the Respondent-workman. I have also gone through the findings recorded by the Labour Court and the Industrial Court as well as records of the case filed alongwith the Petition and with the affidavit-in-reply.

5) Petitioner has heavily relied upon letter dated 4 November 2014 addressed by the Respondent to the ex-Minister and ex-director of the sugar factory. The letter dated 4 November 2014 reads thus:-

दि.4-11-2014

प्रति ,
मा. आ. श्री . जयंतराव पाटील
माजी ग्रामविकास मंत्री व मार्गदर्शक संचालक ,
राजारामबापू पाटील सहकारी साखर कारखाना लि . राजारामनगर,
ता. वाळवा, जि . सांगली .

अर्जदार : नितीन विश्वासराव बारवाडे
मु . पो . शिंगांव ता. वाळवा ' जि . सांगली.

विषय : स्वेच्छानिवृत्ती मिळणेबाबत.

सन्माननीय साहेब,

आपल्या साखर कारखान्यात सन 1997 पासून सेवेत आहे - या सेवा काळात सर्वसामान्य सेवा - सुविधा सुद्धा मला मिळाल्या नाहीत. त्यामुळे नाईलाजाने दि. 2-12-2009 रोजी नुकसानभरपाई मिळणेसाठी विनंती अर्ज आपणास दिला.

सदर अर्जावर आपण दि. 23-1-2011 रोजी मा. चेअरमनसाहेब व मा. कार्यकारी संचालकसो यांचेशी चर्चा करून आदेश दिला. तरीही प्रत्यक्ष काहीही कार्यवाही झालीच नाही.

यानंतर दि. 4-3-2014 रोजी नुकसानभरपाईसह सेवामुक्त करणेचा अर्ज आपणास दिला. याबाबतही कार्यवाही झाली नाही म्हणून दि. 12-7-2014 रोजी confidential अर्ज दिला.

कारखाना १७ वर्ष + मुंबई ६ वर्षे असा २३ वर्षांचा काळ गेला .

साहेब, माझ्या आयुष्याचा प्रश्न आहे. म्हणून योग्य मोबदला मिळाल्यास स्वेच्छानिवृत्ती घेण्याची इच्छा आहे.

तरी माझ्या स्वेच्छानिवृत्तीस मंजुरी द्यावी हि विनंती.

धन्यवाद ,
कळावे ,

आपला नम्र,

नितीन विश्वासराव बारवाडे मु.पो. शिंगांव

6) According to Petitioner, there were series of letters addressed by the Respondent and the letter dated 4 November 2014 was in continuation of the said correspondence. It appears that the Petitioner did not initially rely upon letter dated 4 November 2014 in its written statement and introduced the theory of tendering voluntary retirement request by the Respondent on 4 November 2014 by amending the written statement. Otherwise, the initial case of the Petitioner was that Respondent had tendered resignation on 9 June 2015, which was accepted by the Petitioner. Labour Court has refused to believe genuineness of the letter dated 9 June 2015. I am in agreement with the findings recorded by the Labour Court that the Petitioner was not able to prove tendering of letter dated 9 June 2015 by the Respondent. In fact, the said letter dated 9 June

2015 was not even produced alongwith the Petition and the same is brought on record by the Respondent with affidavit-in-reply. The Respondent has also placed on record copy of unamended written statement filed by the Petitioner before Labour Court in paragraph 5.5 whereof, Petitioner pleaded as under:-

5.5 ...The Karkhana respectfully submits that the Complainant of his own accord opted to tender his application seeking voluntary retirement from employment dated 9th June 2015 to the Karkhana. ...

7) This Court does not appreciate the conduct of the Petitioner in relying on document dated 9 June 2015 before the Labour Court, on which no reliance is placed in the present Petition. Memo of the Petition nowhere makes any reference to the alleged letter dated 9 June 2015. What is relied on in the present Petition is only letter dated 4 November 2014. The very fact that the Petitioner initially sought to rely upon alleged letter dated 9 June 2015 shows that their initial stand was about discharge of the Respondent from service based on request for retirement on 9 June 2015. It is only after realising that the Petitioner was not in a position to prove its claim of tendering of retirement letter dated 9 June 2015 that it apparently improved upon its case and relied upon letter dated 4 November 2014. This conduct on the part of the Petitioner would clearly disentitle it from invoking extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. Even if Petitioner's conduct in taking conflicting stands with regard to letters dated 4 November 2014 and 9 June 2015 is to be momentarily ignored,

it becomes difficult to believe that Respondent had opted for unconditional voluntary retirement vide letter dated 4 November 2014. The said letter was not addressed to the Managing Director, who had authority to grant retirement or accept resignation. The same was apparently addressed to the ex-Minister and ex-director of the sugar factory. The contents of the letter clearly shows that Respondent expressed desire to opt for retirement only in the event of payment of compensation. Apparently, Respondent had grouse about non-payment of due salary and allowances during the period of his service and was repeatedly corresponding with the Petitioner-sugar factory for payments. Respondent apparently showed willingness to retire from services of the Petitioner in the event of he being paid compensation towards due amount of salary and allowances. There is nothing on record to indicate that any amount was agreed to be paid or actually paid to the Respondent towards compensation, which was the condition expressed in the letter dated 4 November 2014 for tendering of resignation. There is nothing on record to indicate that the said condition was withdrawn by the Respondent in any manner or that he opted for unconditional voluntarily retirement. Finding of fact is recorded that the alleged letter dated 9 June 2015 was never submitted by the Respondent. It therefore becomes difficult to connect the letter dated 4 November 2014 with the order of discharging the Respondent from service passed on 14 August 2015. There is also a long gap from letter dated 4 November 2014 and discharge order dated 14 August 2015. I am therefore not inclined to

interfere in the concurrent findings recorded by the Labour and the Industrial Court *qua* illegal discharge of the Respondent.

8) Having upheld the findings of the Labour and the Industrial Court on the issue of discharge of the Respondent, the next issue for consideration is nature of relief that can be granted in favour of the Respondent in the facts and circumstances of the present case. Respondent is out of service for more than 10 years by now. His current age is apparently 54 years. There is unsavory relationship between Petitioner and Respondent on account of long litigation that has ensued for last 10 years. In my view therefore, payment of lumpsum compensation to the Respondent in lieu of reinstatement and backwages would meet the ends of justice in the facts and circumstances of the present case. The last drawn gross pay of the Petitioner was Rs.19,446/- per month at the time of his discharge. The Labour Court has awarded only 50% backwages and the same would be to the tune of roughly Rs.12 lakhs by now. It has come in evidence that Respondent has an agricultural land and he used to draw income from crops cultivated thereon.

9) Considering the above facts, in my view payment of lumpsum compensation of Rs.10,00,000/- to the Respondent in lieu of reinstatement and backwages would be appropriate.

10) I accordingly proceed to pass the following order:-

- (i) The judgment and order dated 29 February 2024 passed by the Labour Court, Sangli in Complaint (ULP) No.62 of 2015 and judgment and order dated 20 July 2024 passed by the Industrial Court, Sangli in Revision (ULP) Nos. 5 and 6 of 2024 are modified to the extent that Respondent shall be entitled to receive lumpsum compensation of Rs.10,00,000/- from the Petitioner in lieu of reinstatement and backwages towards full and final settlement of all his service related claims from the Petitioner.
- (ii) Beyond lumpsum compensation so awarded, Respondent shall not be entitled to claim any further benefits from the Petitioner.
- (iii) Petitioner shall pay to the Respondent compensation of Rs.10,00,000/- within a period of two months.

11) With the above directions, Petition is partly allowed and disposed of. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]