

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3587 OF 2025

The Chief Executive Officer

Zilla Parishad Office

... Petitioner

Versus

Shri Borkarya Motiram Pawara

... Respondent

Mr. Dhairyasheel Sutar a/w Ms. Kavita Vajapure & Ms. Latika Kabad for the Petitioner.

Mr. Gautam Yadav for the Respondent.

Mr. Borkarya Motiram Pawara Respondent in person present.

CORAM : SANDEEP V. MARNE, J.

DATE : 9 MAY 2025.

P.C. :

1) The Petition challenges Award dated 16 February 2023 passed by the Presiding Officer, First Labour Court, Nashik answering the Reference (IDA) No. 44 of 2015 in the affirmative and directing Respondent's reinstatement with continuity and full backwages by setting aside termination order dated 27 March 2014.

2) I have heard Mr. Sutar, the learned counsel appearing for the Petitioner and Mr. Yadav, the learned counsel appearing for Respondent. I have gone thorough the findings recorded by the Labour Court in the impugned Award as well as the relevant

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documents placed alongwith the Petition as well as with the compilation of documents.

3) Respondent was apparently working as a Muster Assistant with the Petitioner-Zilla Parishad. He was absorbed in services of Zilla Parishad with effect from 11 December 2003 and was posted in Primary Health Center, Kumbhale, Taluka Peth, District Nashik. It appears that Respondent functioned as Aarogya Sevak after his absorption. Disciplinary proceedings were initiated against him vide Memorandum of Chargesheet dated 23 February 2012 in which four charges were leveled against him. In the first charge, it was alleged that Respondent remained unauthorisedly absent from 6 January 2004 to 9 February 2005; from 1 January 2006 to 25 November 2009 and from 10 December 2009 onwards till service of the chargesheet. In the second charge, it was alleged that the Respondent was yet to complete the period of probation and despite being repeatedly called upon, he did not co-operate for completion of service book. In the third charge, it was alleged that Respondent failed to attend the training for the post of Multi Purpose Health Worker and failed to complete the same. In the fourth charge, it was alleged that Respondent was found to be consuming alcohol during duty hours and was misbehaving with the villagers and other employees. It is the case of Petitioner- Zilla Parishad that enquiry was conducted into the charges and after charges were proved in the inquiry, Respondent was terminated from service on 27 March 2014.

4) At the instance of the Respondent, Reference (IDA) No. 44 of 2015 was registered with First Labour Court, Nashik. Part-I Award relating to the issues of fairness in the enquiry and perversity

in the findings of the Enquiry Officer went against the Petitioner-Zilla Parishad. The enquiry was held to be not fair and proper and findings of the enquiry officer was held to be perverse. It appears that the Petitioner-Zilla Parishad thereafter made an attempt to prove charges before the Labour Court. When Respondent filed affidavit of evidence, Petitioner failed to cross examine the Respondent. Though Petitioner presented few witnesses before the Labour Court and their examination in chief was recorded, the witnesses were not offered for cross examination by the Respondent. This is how Petitioner failed to prove the charges before the Labour Court. The Labour Court has accordingly directed reinstatement of the Respondent with continuity and full backwages.

5) From the charges, it appears that the Respondent was yet to complete the period of his probation. He had not even completed the training meant for the post of Multi Purpose Health Worker. He was accused of remaining unauthorisedly absent for a long duration. The statement of claim itself indicates that Respondent had proceeded on leave in excess of 90 days and was required to remain present before medical board at Dhule. Thus, absence of the Respondent for period in excess of 90 days is not really disputed and the same is borne out from the Statement of Claim filed by him.

6) Though Respondent faced serious charges of remaining unauthorisedly absent for a long duration as well as consumption of alcohol during duty hours, Petitioner did not ensure that proper evidence was produced to prove the charges. Initially it failed to ensure that the domestic enquiry was conducted after affording due opportunity of defence to the Respondent. After the Part-I Award

went against it, Petitioner did not avail the second opportunity granted before the Labour Court by leading evidence in support of the charges. Though witnesses were produced to prove charges, they were not offered for cross examination. The Respondent has thus succeeded before the Labour Court mainly on account of negligent act of the Petitioner in not subjecting the witnesses for cross examination. In that view of the matter, no fault can be found in the direction of the Labour Court directing reinstatement of the Respondent.

7) Coming to the issue of backwages, in my view, Respondent himself has admitted his absence from duties for period in excess of 90 days. The chargesheet indicates that the last tranche of absence was from 10 December 2009 till the chargesheet was issued on 23 February 2012. The Respondent was thus absent from duties for three long years. He was not even a confirmed employee and was yet to complete his probation. Respondent seeks to blame the Petitioner for his absence as he was not allowed to resume duties despite production of fitness certificate from the medical board. Be that as it may. Even if it is assumed that the Petitioner was to be blamed for not permitting Respondent to resume duties after production of fitness certificate from medical board, this could be a reason for directing Respondent's reinstatement. However, he deserved atleast some punishment for remaining absent for over 90 days. Absence of a health worker from Primary Health Centre causes immense difficulties for patients. Long absence from duties by a health worker would attract some punishment. Therefore though the order directing reinstatement and continuity could be upheld, the direction for payment of full backwages was clearly unwarranted.

8) Since Respondent himself did not dispute absence for some period, he cannot be rewarded 100% backwages. Even otherwise, since the punishment of dismissal is set aside on account of Petitioner's inability to present its witnesses for cross-examination, full backwages cannot be a natural consequence of reinstatement in service. Petitioner Zilha Parishad cannot be made to bear the financial burden of paying backwages for over 10 long years when the Respondent's acts have contributed to his dismissal.

9) The Respondent has already been reinstated in service towards partial implementation the Award dated 16 February 2023. In my view, award of 50% backwages to the Respondent would meet the ends of justice considering the unique facts and circumstances of the present case. This Court had directed deposit of 50% backwages by order dated 11 March 2025 and towards implementation of that order, Petitioner has deposited an amount of Rs.20,97,137/- in this Court. In my view, Respondent can be permitted to withdraw the said amount alongwith accrued interest. If there is any difference in amount of 50% backwages and deposited amount the same needs to be paid to the Respondent.

10) The Petition accordingly succeeds and I proceed to pass the following order:

i) The Award dated 16 February 2023 passed by Labour Court, Nashik is modified to the limited extent that the Respondent shall be entitled to be paid only 50% of backwages as a result of setting aside his termination effected on 27 March 2014.

ii) Respondent shall withdraw the entire deposited amount in this Court alongwith accrued interest.

iii) If there is any difference in the deposited amount and 50% amount of backwages, the same shall be paid to the Respondent within a period of eight weeks.

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

[SANDEEP V. MARNE, J.]