

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

WRIT PETITION NO.16015 OF 2024

Khadi Village Industries Commission & Anr.Petitioners
V/S
Tukaram Bhikaji PawarRespondent

Mr. K.P. Anilkumar with Ms. Priyanka Kumar and Ms. Chinmay Apte *for the Petitioners.*

Mr. Balaji Yenge a/w Mr. Santosh C. Bhosle *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 23 APRIL 2025.**

P.C.:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and final disposal.

2. This Petition is filed by Khadi Village Industries Commission, which is a statutory body under the Ministry of Micro Small & Medium Enterprises. The Petitioner challenges Award dated 29 November 2022 passed by the learned Presiding Officer, First Labour Court, Pune by which Reference (IDA) No.145 of 2019 has been allowed, termination order dated 14 February 2005 in respect of the Respondent is set aside and the Petitioner is directed to treat the Respondent as in continuous

service from 14 February 2005 till the date of his retirement with further directions to pay him all the retirement benefits.

3. I have heard Mr. Anilkumar, the learned counsel appearing for the Petitioners and Mr. Yenge, the learned counsel appearing for the Respondent.

4. It appears that the Respondent was appointed as Peon on 1 December 1977 in one of the Institutes of Khadi Village Industrial Commission (**KVIC**) viz. Central Bee Research and Training Institute (**CBRTI**). The Respondent was apparently posted at Pune in CBRTI. By order dated 16 November 2000 Respondent was transferred from CBRTI, Pune to another Institution of KVIC viz. Jawaharlal Bajaj Centre Research Institute at Wardha. It appears that Respondent failed to join at the transferred place for substantial period of time. By memorandum of charge-sheet dated 6 October 2003, disciplinary proceedings were initiated against the Respondent. At the conclusion of enquiry, Enquiry Officer held that charge levelled against the Respondent was proved. By order dated 14 February 2005 punishment of dismissal from service was imposed on the Respondent. The Respondent initially filed Writ Petition No.4893 of 2005 in this Court, which was disposed of granting liberty to the Respondent to file Appeal before the Appellate Authority. The Appeal was rejected by order dated 20 November 2006. Respondent thereafter filed Writ Petition No.2893 of 2007

challenging the order of the Appellate Authority dated 20 November 2006. The Petition was however dismissed on the ground that there was delay in preferring the Appeal. Respondent preferred the Special Leave Petition against the order passed by this Court on 4 August 2007 which was apparently withdrawn and disposed of. Respondent thereafter moved proceedings under the Industrial Disputes Act, 1947 (**ID Act**) after delay of 13 long years and at his instance the Regional Labour Commissioner (Central), Pune made a reference which was registered as Reference (IDA) No.145 of 2019 before the First Labour Court, Pune.

5. The Labour Court has held that proper domestic enquiry was conducted against the Respondent before dismissing him from service. The enquiry is held to be fair and proper. The Labour Court further held that findings of the Enquiry Officer were not perverse. After answering the issues of fairness and enquiry and perversity in the findings of the Enquiry Officer against the Respondent and in favour of the Petitioner, the Labour Court has still proceeded to interfere in the order of dismissal by invoking principle of proportionality. The Labour Court has held that punishment for dismissal from service was not warranted for proved misconduct of absence from service. The Labour Court has held that the employer could have at the highest denied salary in respect of period of absence from 17 November 2000 to 14 February 2005.

6. I am not in agreement with the finding recorded by the Labour Court that deduction of salary was the only punishment which could be awarded to an employee remaining unauthorizedly absent. Respondent remained absent unauthorizedly for a period of almost five years between 2000 to 2005. Actually an employee remaining unauthorizedly absent by not joining transferred place actually constitutes misconduct, particularly when the period of absence is almost five long years. In that view of the matter, the Petitioner was justified in imposing some punishment on the Respondent. Mere denial of salary for period of absence is not a prescribed penalty.

7. The next issue for consideration is the exact penalty that could have been imposed on the Respondent. It is observed that the Respondent had rendered 23 long years of service from 1 December 1977 till he was transferred on 16 November 2000. The punishment of dismissal from service would wipe out his past services of 23 long years. Considering the unique facts and circumstances of the present case, in my view, the Petitioner could have awarded lesser punishment of compulsory retirement to the Respondent so that he would receive atleast pensionary benefits in respect of services rendered by him from 1 December 1977 to 16 November 2000. Therefore, the impugned Award passed by the Labour Court deserves to be modified.

8. The Petition accordingly succeeds partly and I proceed to pass the following order:

i) The Award dated 29 November 2022 passed by the Labour Court is set aside and modified.

ii) The Petitioner shall treat Respondent as having been compulsorily retired from service with effect from 14 February 2005.

iii) However the period of absence from 17 November 2000 to 14 February 2005 shall not be treated as period spent on duty for any purposes. Accordingly Petitioner shall start paying pension and pensionary benefits to the Respondent with effect from 14 February 2005 by taking into consideration services rendered by him from 1 December 1977 to 16 November 2000.

iv) All the arrears of pension and pensionary benefits shall be paid to the Respondent within a period of three months.

9. With the above directions, the Petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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RAJALINGAM
KATKAM
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by SUDARSHAN
RAJALINGAM
KATKAM
Date:
2025.04.25
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