



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 3934 OF 2011

The Sub-Divisional Officer,
Public Works Sub-Division No.1, Yavatmal,
Taluka and District – Yavatmal.

...PETITIONER

Versus

- 1] Premdas s/o Sukhdeo Wagde,
aged about 54 years, Occ. Service,
R/o Narsapur, Post – Asti,
Taluka – Kalamb, District – Yavatmal.
- 2] The Member, Industrial Court, Yavatmal.
- 3] The Member, Labour Court, Yavatmal.

...RESPONDENTS

Mr. K.R. Lule, A.G.P. for the petitioner/State.
None for the respondents.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 3, 2025

ORAL JUDGMENT :

On 3/1/2025, following order was passed :

“Heard.

The challenge is to order of reinstatement and back wages passed by both the Courts below. This Court vide order dated 25-1-2012 issued rule and by recording the issue involved was pleased to stay the order passed by the Labour Court only to the extent of back wages. This Court has expressed a view that the complainant had approached the Labour Court after lapse of one year and had also not pleaded that after termination, he was not in gainful employment and, therefore, order granting backwages has

been stayed.

Learned Assistant Government Pleader seeks time to take instructions as regards status of employment viz. whether the respondent has retired on superannuation and whether anything survive in the petition.

List in the week commencing from 20-1-2025.”

2] The learned A.G.P submits that respondent no.1 – employee has, on 31/12/2014, stood retired on superannuation. On the payment of backwages, he submits that neither the Labour Court nor the Industrial Court have delved upon the aspect of gainful employment during the intervening period, viz., the date on which the employee was terminated till the order of reinstatement came to be passed. The Labour Court observed that if the termination is found to be illegal, the employee is entitled for reinstatement with continuity of service and backwages unless and until the employer has shown any ground for departure from the normal rule. The Labour Court, however, has not considered whether the employee was in gainful employment in the intervening period. In fact, it appears that no such case was put forth by the employee. In other words, the employee was silent on his gainful employment during the intervening period.

3] The Hon'ble Supreme Court, in the case of Allahabad Bank And Others Vs. Avtar Bhushan Bhartiya [(2022) 13 SCC 202], in paragraph 36, has held thus :

“36. The reliance placed upon the decision in Pawan Kumar Agarwala v. SBI [(2015) 15 SCC 184] may not also be of help to the employee. It is a case where this Court applied the propositions laid down in Deepali Gundu Surwase [(2013) 10 SCC 324]. This Court found that there was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same.”

4] As could be seen, in the first instance, there is an obligation on the part of the employee to plead that he is/was not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish that the employee was gainfully employed in the intervening period.

5] In the present case, since the employee himself failed to led evidence on the point of gainful employment, the burden would not shift on the petitioner – employer to prove otherwise.

6] Both the Courts below, thus, committed error of law while allowing the claim of backwages. The respondent no.1 is not before the Court to counter the submissions made by the learned A.G.P. on the point of gainful employment.

7] The order passed by the Courts below granting backwages, therefore, would not stand scrutiny of law.

8] Resultantly, the petition is partly allowed. The judgment and order dated 24/3/2009 passed by the Member, Industrial Court, Yavatmal, in Revision U.L.P. No. 280/1999, and judgment and order dated 31/7/1997 passed by the Judge, Labour Court, Yavatmal, in Comp. (ULP) No. 21/1995, are quashed and set aside to the extent of granting backwages to the employee. Rest of the judgment stands intact.

9] Rule is disposed of in the above terms with no order as to costs.

JUDGE

Sumit