2026:BHC-AUG:47142

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

43 WRIT PETITION NO. 10199 OF 2019

KINETIC ENGINEERING LTD., AHMEDNAGAR

VERSUS

ATULKUMAR RAMNATH SIKCHI

...

Mr. V.S. Bedre, Advocate for petitioner

Mr. K.M. Nagarkar, Advocate for sole respondent

...

WITH

WRIT PETITION NO. 10139 OF 2021

ATULKUMAR RAMNATH SIKCHI

VERSUS

KINETIC ENGINEERING LTD., AHMEDNAGAR

...

Mr. K.M. Nagarkar, Advocate for petitioner

...

CORAM : ROHIT W. JOSHI, J.

DATE : 06th OCTOBER, 2026

ORDER :

. The petitioner in Writ Petition No.10199 of 2019 will hereinafter be referred as 'employer' and petitioner in Writ Petition No.10139 of 2021

will be referred as ‘employee’. Services of the employee were terminated after holding disciplinary inquiry vide order dated 15.06.2011. The order of termination was assailed by the employee before the learned Labour Court in Complaint ULP No.24/2011. The complaint came to be allowed vide judgment and order dated 29.08.2017. The order of termination was set aside and relief of reinstatement with 50% back wages was granted to the employee. Being aggrieved by the said judgment and order the employer preferred a revision before the learned Industrial Court being Revision Application ULP No.32/2017. The employee also filed a separate revision being Revision Application ULP No.50/2018 raising a grievance with respect to denial of 50% back wages. Both the revision applications came to be decided by common judgment on 15.04.2019 by the learned Industrial Court, Ahmednagar. The learned Industrial Court dismissed both the revision applications. Since then the employee is reinstated in service and the learned Advocate for the employer has restricted his submissions only to the extent of relief of back wages as awarded by learned Labour Court.

2 The learned Advocate for the employee argues that since the order of termination is found to be bad and is accordingly set aside, relief of 100% back wages should have been granted by the learned labour Court. It is argued that in the evidence a specific statement about non gainful

employment is made by the employee and the employer was not in a position to bring any evidence to the contrary on record. It is contended that once the employee makes a statement about non gainful employment, the burden of gainful employment shifts upon the employer, which the employer has failed to discharge.

3 Per contra, learned Advocate for the employer draws attention to the cross-examination of the employee, where he has stated that his family comprising of mother, wife and two children is completely dependent upon him. His children were taking education. Elder son was in CA Final Year. He has stated that his wife and mother are homemakers. These admissions, according to the learned Advocate for the employer, clearly make out a case of gainful employment elsewhere. The learned Advocate contends that the employee has deliberately suppressed relevant facts of the learned Labour Court and as such he is not entitled to any relief of part wages. Learned Advocate for the employer has tendered copy of deposition of the employee recorded in complaint ULP No.24/2011. The same is taken on record.

4 Upon hearing the rival submissions, this Court is of the considered opinion that after termination of services of an employee it cannot be expected of him to sit idle. The employee has to support his family and it is obvious that he would try to earn for living by doing some work. That by

itself should not be a ground by denying the back wages. It is well settled that initial burden to prove the absence of gainful employment stands discharged on a statement on oath that the employee was not gainfully employed. In the present case such a statement is indeed made by the employee in the examination-in-chief. However, it has also come on record that the employee was the sole bread earner of his family which comprised of himself and four dependents viz. mother, wife and two children. The elder son of the employee was a student of CA Final Year. Although the employer could not bring on record positive evidence with respect to gainful employment of the employee, the material admissions which have been extracted in cross-examination will indicate that the employee did have independent source of income, particulars whereof were not divulged by him. It is also well settled that an employee must show that he had made sincere attempts to secure alternate employment. The learned Industrial Court has also correctly taken note of this legal position. The affidavit evidence of employer, although states that he could not secure alternate employment, particulars of efforts for securing alternate employment are pertinently missing in the affidavit.

5 Having regard to the totality of the circumstances, the view taken by the learned labour Court for awarding 50% back wages appears to

be a reasonable view. The learned Industrial Court while exercising revisional jurisdiction has rightly not interfered with the relief of 50% back wages as granted by the learned Labour Court. Upon perusal of reasons recorded by the learned Labour Court as also by the learned Industrial Court, this Court is of the opinion that the said observations and findings cannot be said to be perverse or contrary to the material on record. In the considered opinion of this Court, no case for interference is made out either by employee or employer. Therefore, both writ petitions stand **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

agd