

(2017) 05 BOM CK 0175
In the Bombay High Court
Case No : 5184 of 1998

Administrator & Managing Director, Milk Producers Union Ltd.	APPELLANT
Vs	
Afzalkhan	RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

Citation : (2017) 05 BOM CK 0175

Hon'ble Judges : P.R. Bora

Bench : SINGLE BENCH

Advocate : S.G. Karlekar, N.L. Dhobale

Judgement

1. Heard. The present petition is filed against the Judgment and Order dated 7th August, 1995 passed by the Labour court, Aurangabad in Complaint (ULP) No.226/1993 which has been confirmed by the Industrial court vide its order dated 11th February, 1998 passed in Revision (ULP) No.68/1995.
2. The respondent had filed the aforesaid Complaint before the Labour court challenging the order of termination dated 25th March, 1991 issued by the petitioner. It was the contention of the respondent that he was illegally terminated without following due process of law and without conducting any enquiry against him.
3. Whereas, it was the case of the petitioner that the Respondent had unauthorisedly remained absent from duty for a period of more than one year and has indicated his intention of not joining the services again. It was the further contention of the petitioner that the respondent was insisting for taking his son on the establishment of the petitioner on his place by giving him premature retirement. It was the further contention of the petitioner that when the long unauthorized absence was accepted and admitted by the respondent, in fact, there was no need of conducting any enquiry against the respondent. The petitioner had thus justified the order of termination on the aforesaid grounds.
4. The submissions so made by the petitioner, however, did not find favour by the

Labour court. The Labour court held the termination illegal and directed reinstatement of the respondent with continuity of service and with full back wages, excluding the period of delay. Though the Revision Application was filed by the petitioner, the Industrial court did not cause any interference in the order passed by the Labour court and dismissed the Revision Application. Aggrieved by, the petitioner has filed the present petition, challenging both the aforesaid orders.

5. Learned counsel appearing for the petitioner, has assailed the impugned order on various grounds. However, before adverting to the objections so raised by the petitioner in exception to the impugned judgments, it is necessary to record certain subsequent events.

6. After the decision of the Labour court declared on 7th August, 1995, the petitioner filed a Revision Application on 2nd September, 1995. During pendency of the said Revision Application, the petitioner reinstated the respondent w.e.f. 2nd November, 1995 and since then the respondent continued to be in the employment of the petitioner till his attaining the age of superannuation.

7. In the present petition, this court, vide order passed on 22nd February, 1999, has stayed the effect and operation of the order passed by the Labour court and confirmed by the Industrial court to the extent of payment of back wages.

8. In view of the fact that the respondent was reinstated in the service and continued to be in the employment of the petitioner till he attained the age of superannuation, the challenge as regards to the order of reinstatement has rendered infructuous and this court may now need not to enter into the said controversy. It was also informed during the course of hearing of the petition that the retiral benefits are also extended to the respondent, giving him continuity in service. Thus, the only question which requires consideration is, legality and correctness of the order passed by the Labour court and confirmed by the Industrial court as regards to the grant of full back wages to the respondent.

9. It is not in dispute that the respondent had remained absent since 21st February, 1990 till 25th of March, 1991, i.e. for the period of about more than 13 months. There is further no dispute that the petitioner has issued notices to the respondent on 2nd March, 1990; 26th June, 1990 and 5th December, 1990. The copies of these notices were placed on record by the petitioner in the proceeding before the Labour court. In the cross-examination, the respondent had admitted that he has received the aforesaid notices. Vide the said notices, the respondent was called upon to explain his unauthorized absence and was directed to resume duties or else was cautioned that his services may be terminated assuming that he was not inclined to join the duties. It was the case of the respondent that in the relevant period he was ill and had sought the leave on medical ground.

10. My attention was invited by the learned counsel appearing for the petitioner to the letter dated 14th December, 1990 written by the respondent to the petitioner. In the said letter, the respondent has confirmed that from 21st

February, 1990 he was not on duty and was on long leave. The contents of the said letter further reveal that the respondent had also communicated to the petitioner that because of his ill-health, he was not sure whether he would be able to resume the duties. The respondent had thereafter requested that in view of the fact that he was ill and was not likely to resume the duties, his son by name Afsarkhan Patel, be taken on the establishment on his place on the post of Helper on which he was working. A copy of the aforesaid letter has been filed by the respondent himself at the time of filing the Complaint before the Labour Court. It is thus evident that in a way the respondent has accepted the fact of abandoning the services. His request to appoint his son on his place also suggests that he had declared his intention not to join the services and get relieved from the job with the petitioner.

11. After the termination notice was served upon him, the respondent, took the somersault and made allegation against the petitioner that without giving him any opportunity and show cause and without conducting any enquiry against him, his services were illegally terminated and further that he was being victimized by the petitioner. From the record it is further clear that the respondent did not file the Complaint before the Labour Court within the prescribed period. It is further the matter of record that the application for condonation of delay was preferred by the respondent seeking condonation of delay which has occurred in filing the Complaint by him. It is not in dispute that the delay was condoned by the Labour court and the Complaint was proceeded further.

12. On perusal of the Judgment of the Labour Court, it is quite clear that it has set aside the order of termination only on the ground that before terminating the services of the respondent, due procedure was not followed. Even though it is the contention of the petitioner that in view of the admitted facts, conduction of any domestic enquiry could have been an empty formality, the contention so raised is difficult to be accepted. Having regard to the principles of natural justice, it was necessary on part of the petitioner to conduct an enquiry into the alleged absence of the respondent from duties and only thereafter his services could have been dispensed with by the petitioner. In for as these aspects are concerned, there seems no reason to cause any interference in the finding recorded by the learned Judge of the Labour Court. Even otherwise, as noted herein above, since the petitioner has reinstated the respondent w.e.f. 2.11.1995 and the respondent continued in the employment of the petitioner till he attained the age of superannuation, there seems no reason now to enter into the said controversy. However, there is substance in the argument made on behalf of the petitioner that while directing reinstatement of the respondent, the relief of back wages was not liable to be granted as of rule. Perusal of the impugned judgment reveals that while directing reinstatement of the respondent with full back wages, the Labour Court has not assigned proper reasons for granting the full back wages to the respondent.

13. It is not a rule of thumb that the order of reinstatement shall automatically follow the relief of continuity of service and the back wages. In the case of *State of Punjab v. Jagir Singh* - (2004) 8 SCC 120, the Hon"ble Apex court has laid down the factors to be considered by the Labour Court in granting relief of back wages. As has been observed by the Hon"ble Apex court in the aforesaid judgment, while directing grant of back wages, the Labour court must consider the totality of the circumstances. As has been observed by the Hon"ble Apex court in the case of *UP State Brassware Corporation Ltd. v. Uday Narayan Pandey* - (2006) 1 SCC 479

" No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of certain provisions of the Act."

14. It is not in dispute that the respondent had remained absent for a considerable long period of more than one year and committed delay of about 2? to 3 years in approaching the Labour court. The period in which the Respondent had remained absent is liable to be governed by Leave Rules. It was up to the Department whether to treat the said period as extraordinary leave or to grant the permissible leaves which were at the credit of the Respondent. However, the wages of the said period cannot be the subject matter of the Complaint filed by the Respondent in the Labour Court. In so far as delay which has occurred in filing the Complaint by the Respondent is concerned, the Labour Court in the impugned order has dis entitled the Respondent from receiving the wages of the said period and the said order has not been challenged by the Respondent. Now, the only period, which remains to be considered for grant or refusal of the wages, is the period from the date of filing of the Complaint by the Respondent till his reinstatement.

15. The Complaint was filed by the Respondent on 6.7.1993 and he was reinstated in service on 2.11.1995. The order of the Labour Court read as it is makes the Respondent entitled for the full back wages of the said period. It is the precise grievance made by the petitioner that when in the said period the Respondent had admittedly not worked with the petitioner, grant of full back wages was unjustified. I find substance in the point so urged by the petitioner. It is not the case that the services of the Respondent were terminated on false grounds or without there being any reason. The order of termination has been set aside by the Labour Court on the ground that before terminating the services of the Respondent, the procedure was not followed. As I noted earlier, the fact that the Respondent was unauthorisedly absent from duties for a long period of 13 months, is not in dispute. Only because the procedure was not followed, the misconduct alleged against the Respondent does not cease to exist. In the circumstances, though it would have been unjust and improper to deprive the

respondent from the wages of the entire said period, it was equally unjust to grant full back wages to the respondent of the said period. Having regard to the facts and circumstances of the case, it appears to me that it would subserve the ends of justice, if the Respondent is made entitled for half of the back wages from the date of filing of the Complaint by him till his reinstatement. I am, therefore, inclined to modify the impugned order. Hence, the following order, ORDER

1) The Order passed by the Labour court in Complaint (ULP) No.226/1993 is quashed and set aside to the extent of grant of full back wages. It is directed that the petitioner shall pay to the Respondent 50% back wages for the period between 6th July, 1993 to 2nd November, 1995, within three months from the date of this order or else the said amount shall carry interest @ 9% p.a. till its realization, from the date of filing of the Complaint ULP by the Respondent, i.e. 6th July, 1993.

16. The writ petition is thus partly allowed and the rule is made absolute in aforesaid terms.