

(2000) 06 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 297 of 1987

Khandu Rambhau Bhosale

APPELLANT

Vs

Western Maharashtra Development Corporation Ltd.,
Distillery Division and Another

RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 25F

Citation : (2000) 87 FLR 50 : (2001) 3 LLJ 47

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The petitioner has challenged an award to the Labour Court dated April 29, 1987 granting reinstatement with continuity of service and to place him in the pay-scale of the watchman. Though, it does not appear in the operative part of the order in paragraph 12 of the award the Labour Court has categorically held that the petitioner workman was not entitled for backwages. It appears that the Labour Court has inadvertently not mentioned the question of backwages.

2. The petitioner had raised an Industrial Dispute for reinstatement with backwages and continuity of service with effect from July 28, 1982 on the ground that he was in employment as a watchman with effect from April 10, 1982 with the first respondent and that his services were unlawfully terminated with effect from July 28, 1982. The State Government had referred the said Industrial Dispute to the Labour Court for adjudication under Sections 10 and 12 of the Industrial Disputes Act, 1947. Both the parties filed their pleadings and adduced their respective evidence. It was the specific case of the respondent employer that the petitioner was not in their employment and therefore, the respondent was not liable to reinstate the petitioner workman and to grant any relief to him. The Labour Court framed the following points for determination.

"3. Thus, the points which arise for determination are:-

1. Whether the 2nd party was the workman as defined in Section 2(s) of the I.D. Act?

If so, whether he was illegally terminated from service by the 1st party?

3. Is the 2nd party entitled for reinstatement with continuity of service and back wages?

My findings are:

1. Yes.

2. Yes

3. As per final order."

and answered the same on the basis of the pleadings and evidence in favour of the petitioner. The Labour Court held that the petitioner was "workman" as defined u/s 2(s) of the Act and his services were illegally terminated and that he was entitled for reinstatement with continuity of service as per the final order. It is the grievance of the learned advocate for the petitioner that having held the termination illegal the normal rule of reinstatement with full back wages and continuity of service should have been followed by the Labour Court. It is submitted by the learned advocate that the termination is held to be illegal being in violation of Section 25-F of the Industrial Disputes Act, and therefore, reinstatement with full backwages should have followed. Instead, the Labour Court has deprived the petitioner of full backwages without any cogent evidence adduced by the respondent employer to enable the Labour Court to depart from the normal rule of reinstatement with full back wages. I find substance in the submissions of the learned advocate. In paragraph 12 of the award the Labour Court has denied the petitioner of full backwages on the ground that "he did not make efforts to find out the alternative job". This conclusion of the learned Judge is contrary to the established law once the order of termination, dismissal, discharge or retrenchment is held to be illegal and the same is set aside. The normal rule of reinstatement with full backwages and continuity of service invariably follows unless the employer pleads and produces cogent and sufficient material to enable the Labour Court to depart from the normal rule. The Labour Court will have jurisdiction to depart from the normal rule under certain exceptional circumstances such as the industry might not be surviving or the workman might be gainfully employed elsewhere or the department where he was employed might have been irrevocably closed and such similar circumstances would justify departure from the normal rule. The entire burden is on the employer to show that the workman was gainfully employed and therefore, whole or part of the backwages should be denied to him on the basis of his earnings from the alternative employment. In the present case the Labour Court has without any reason denied the petitioner the whole backwages. The Labour Court has relied on one sentence in the cross-examination of the

petitioner which reads as under: -

"Alter termination I did not try for the alternative job."

3. The Labour Court has however, interpreted the same to deny him full back wages. The Labour Court had not framed any specific issue putting the petitioner on guard that he would be deprived of his backwages if he did not adduce any evidence in respect of his efforts to get an alternative job of a watchman in any] establishment. Even the respondent employer did not specifically plead that the petitioner having not made any efforts to get an alternative employment of a watchman, he should be deprived of full backwages. The whole burden to plead and prove was on the respondent employer by placing on record sufficient cogent material to enable the Labour Court to depart from the normal rule of reinstatement and backwages when termination is held to be illegal and, improper and the same is set aside by the adjudication machinery. The Labour Court has totally ignored the evidence of the petitioner in his examination-in-chief where he has candidly said "At present I pull on by doing some labour work". In these days of acute unemployment it is not possible for me to hold that any unemployed man/woman would not make any effort to get some job, alternative or any sundry work to keep his/her soul and body together and to put even some food in the mouths of the family members. The petitioner has spoken the truth that he was doing some labour work to pull on his life. He has also further candidly narrated that he did not try to get any job of a watchman as an alternative job. This stray sentence cannot be used against the petitioner to deny him full backwages. Like every human being and every living creature on the earth, the petitioner also tried to make some efforts for living. By doing some labour work instantly available he did not choose to run after uncertain job of a watchman. As some labour work was available he appears to have accepted to retain a bird in hand instead of running after an illusion of a permanent job of a watchman in an establishment or an Industry like that of the first respondent. In these circumstances it would be cruel and harsh to deny the normal relief of backwages to the petitioner after undergoing an ordeal of long drawn battle of unequal fight. There is another harsh reality of life which also cannot be lost sight of. The petitioner's job was that of a watchman. All the "efforts" which he could make was to get up in the morning and stand in the queue of those unemployed waiting outside the factory gates expecting a beckon call from inside the factory or to hear a negative reply of "no work". This would have perhaps continued for days and months together! In this process he would have been required to starve himself and his family and also waste his money on transport and something to eat for the whole day. Human bellies do not go on casual leave. Instead of roaming for an alternative job of a watchman, the petitioner preferred a wiser course of doing some casual labour work which was readily available. There is no other positive evidence adduced by the employer to show that the petitioner was gainfully employed after his termination from employment. Besides, such casual earnings to keep the body and soul together cannot be adjusted for the benefit of the employer who passed illegal and

improper orders throwing their employees in the lot of those already unemployed.

4. Shri Andhale, who was examined on behalf of the respondent employer has not even whispered in his evidence that the workman was employed anywhere. In the aforesaid circumstances, the fact remains that the petitioner was not gainfully employed after his termination from his employment of the respondent. He is therefore, entitled to get full backwages from the date of his illegal termination till the date of his reinstatement. The award of the Labour Court to deny the petitioner of full backwages is quashed and set aside. The order of the Labour Court is modified to that extent. The respondent is hereby directed to reinstate the petitioner with continuity of service and with full backwages. Other part of the order is kept intact. The petition succeeds. Rule is made absolute with no order as to costs.