

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2312 of 2017

Shree Vighnagar Sahakari Sakhar
Karkhana Ltd.

...Petitioner

V/s.

Vishwas Yeshwant Dhomse

...Respondent

Mr. Anand Pai with Mr. Sahil Sayyed, Ms. Lavanya Panicker and Mr. Vipul Patel i/b M/s. Haresh Mehta & Co. *for the Petitioner.*

Mr. Nitesh V. Bhutekar *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD. ON: 30 JUNE 2026.

JUDGMENT PRON. ON: 07 JULY 2026.

JUDGMENT:

1) The Petitioner-employer has filed the present Petition challenging the judgments and orders, both dated 10 March 2016, passed by the Member, Industrial Court, Pune in Revision Application (ULP) Nos.65 of 2014 and 75 of 2014. The Industrial Court has dismissed Revision Application (ULP) No.65 of 2014 filed by the Petitioner-employer challenging the judgment and order dated 18 July 2014 passed by the Labour Court in Complaint (ULP) No.128 of 2002. The Labour

Court had directed reinstatement with 50% backwages in favour of the Respondent. However, in Revision Application (ULP) No.75 of 2014 filed by the employee, the Industrial Court has modified the order passed by the Labour Court and has awarded 100% backwages to the Respondent.

2) Petitioner is a society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and operates a sugar factory. The Respondent was appointed as a seasonal industrial worker w.e.f. 19 November 1986 with the Petitioner and was confirmed as Clerk on 1 March 1996. While so working, the Respondent was subjected to disciplinary proceedings by issuing a charge-sheet dated 19 November 1999 alleging that he was unauthorisedly absent for 240 days. Additionally, charges relating to spreading of false rumours in the factory, insubordination and refusal to carry out lawful orders of superiors were also levelled in the charge-sheet. The second chargesheet dated 26 November 1999 was issued to the Respondent alleging misconduct of refusal to accept letters, leaving workplace without permission and remaining absent on 11 November 1999 to 14 November 1999 and 16 November 1999 to 20 November 1999 and tampered the muster roll. An enquiry was conducted into the charges, in which the Respondent participated. After considering the evidence on record, the Enquiry Officer rendered his findings holding that the charges against the Respondent were duly proved. The Respondent approached Labour Court, Pune, by filing Complaint (ULP) No. 292 of 2001 apprehending dismissal/termination. In that Complaint, the Respondent sought interim stay on the proposed punishment. By order dated 7 February 2002 the Labour Court rejected the application for interim stay.

Thereafter, Petitioner passed order dated 12 February 2002 imposing the punishment of dismissal from service w.e.f. 12 February 2002.

3) The Respondent filed Complaint (ULP) No.128 of 2002 challenging the dismissal order and seeking reinstatement. The Complaint was resisted by the Petitioner by filing written statement. The Labour Court framed the preliminary issue about fairness in the enquiry. By order dated 24 August 2007, the Labour Court held that the enquiry conducted against the Respondent was legal, fair and proper and as per the principles of natural justice. The Respondent led evidence by examining himself. The Petitioner also examined its witness for proving the enquiry conducted against the Respondent.

4) The Labour Court, after considering the pleadings, documentary and oral evidence, partly allowed Complaint (ULP) No.128 of 2002 holding that the Petitioner has engaged in unfair labour practice in terms of Item 1 – (a), (b), (d), (f), and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**M RTP & P ULP Act**). The Labour Court directed reinstatement of the Respondent on his original post with continuity and 50% backwages.

5) Cross Revisions were filed against the order of the Labour Court. The Petitioner filed Revision Application No. 65 of 2014 aggrieved by direction for reinstatement with 50% backwages. On the other hand, the Respondent filed Revision Application No.75 of 2014 to the limited extent of denial of 50% backwages. On 10 March 2016, the Industrial

Court has passed two separate judgments and orders. The Revision Application No. 65 of 2014 filed by the Petitioner has been dismissed. On the other hand, Revision Application No.75 of 2014 filed by the Respondent has been allowed by modifying the order of the Labour Court and by directing that the Respondent is entitled to 100% backwages. The Petitioner is aggrieved by both the orders passed by the Industrial Court on 10 March 2016 as well as the orders passed by the Labour Court dated 18 July 2014 and has accordingly filed the present Petition.

6) Mr. Pai, the learned counsel appearing for the Petitioner submits that the Labour and the Industrial Courts have grossly erred in holding that the Petitioner has indulged into unfair labour practices. That the Respondent has been dismissed from service after the misconduct alleged against him was proved in the domestic enquiry. That the enquiry has been held to be fair and proper by the Labour Court, which finding has attained finality. That the Labour Court did not frame any issue relating to the perversity in the findings of the Enquiry Officer and that therefore, there is no question of such issue being answered. That without holding findings of the Enquiry Officer as perverse, the Industrial Court has proceeded to direct reinstatement of the Respondent.

7) Mr. Pai submits that if the Labour Court was of the view that evidence produced in the enquiry did not prove the misconduct alleged against the Respondent, it ought to have granted an opportunity to the Petitioner to justify its action before the Labour Court by leading evidence. In support, he relies upon judgment of the Apex Court in

Workmen of The Motipur Sugar Factory Private Limited V/s. The Motipur Sugar Factory¹. That in the present case, the Petitioner was denied opportunity of leading evidence to justify its action.

8) Mr. Pai further submits that there is sufficient evidence on record led in the enquiry for proving the charge of unauthorised absence levelled against the Respondent. That he remained unauthorisedly absent for 240 days without seeking prior leave. That he did not give any intimation to the Petitioner for considerable period of time. That subsequently three medical certificates bearing dates of 5 December 1998, 12 January 1999, 28 January 1999 were submitted at one go in July-1999, thereby indicating falsity in the claim of sickness. That the Labour and Industrial Courts have grossly erred in holding that it was the responsibility of the Petitioner to communicate rejection of leave applications. That it was the duty of the Respondent to make enquiries about sanction/ rejection of leave. That in the present case, the Respondent has acted in gross negligence and has been rightly dismissed from service for remaining unauthorisedly absent for inordinate period of 240 days.

9) Mr. Pai further submits that both, the Labour and Industrial Courts even otherwise have grossly erred in awarding backwages to the Respondent. That the backwages are awarded without appreciating the position that the Respondent had agricultural income. That therefore even award of 50% backwages is erroneous. That the Industrial Court has put a premium on the error already committed by the Labour Court by

1 AIR 1965 SC 1803

enhancing the backwages to 100%. He submits that income from agriculture can also be treated as gainful employment as held in *North-East Karnataka Road Transportation Corporation vs. M. Nagangouda*². Without prejudice, Mr. Pai invites the attention of this Court to admission given by the Respondent in cross-examination that he had suffered accident and was unfit two years before recording cross-examination on 12 December 2011. That when the Respondent was not physically in a position to work with the Petitioner, he cannot be rewarded with backwages till he attained the age of superannuation on 25 December 2021. Mr. Pai would therefore pray for setting aside orders passed by the Labour and Industrial Courts.

10) Mr. Bhutekar, the learned counsel appearing for the Respondent opposes the Petition. He submits that the Labour and Industrial Courts have concurrently concluded that the Petitioner has committed unfair labour practices by subjecting the Respondent to victimisation. That absence of the Respondent is attributed to sickness, which is proved on account of production of medical certificates. That therefore absence cannot be treated as unauthorised in any manner. That the Respondent had submitted leave applications from time to time, which remained undecided. That apart from the Petitioner not taking any decision on leave applications, outcome of the same was never communicated to the Respondent. That the Respondent was therefore justified in believing that the leaves were sanctioned. That there was sufficient leave to the credit of the Respondent in his leave account. That the Labour and Industrial Courts have therefore rightly concluded that

2 (2007) 10 SCC 765

the Respondent did not commit any misconduct. He therefore submits that no interference is warranted in the direction for reinstatement in service with continuity and backwages.

11) So far as the issue of backwages is concerned, Mr. Bhutekar submits that absence of gainful employment was both, pleaded as well as proved by the Respondent by leading evidence. He relies on judgment of the Apex Court in **Deepali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalaya**³ in support of his contention that award of full backwages is a natural and automatic consequence of setting aside termination. He submits that income of Rs.10000-12000/- per annum by working as agricultural labour cannot be treated as gainful employment. That the Labour Court had committed an error in restricting backwages to 50% without any basis. That the Industrial Court has rightly corrected the error committed by the Labour Court by awarding 100% backwages.

12) Mr. Bhutekar invites attention of this Court to the judgment of this Court in **Shree. Vighnahar Sahakari Sakhar Karkhana Ltd. V/s. Jaisingh Barku Ghogare**⁴ in support of his contention that the Respondent therein is awarded lumpsum compensation of Rs.35,00,000/- alongwith interest. That the said employee was dismissed from service on 1 September 2006 as against dismissal of the Respondent on 12 February 2002. That therefore the Respondent is entitled to lump sum compensation in excess of what is awarded to Mr. Jaisingh Barku

3 (2013) 10 SCC 324

4 Writ Petition No.8503 of 2019 decided on 23 January 2024

Ghogare in the event of this Court arriving at a conclusion that award of 100% backwages till the date of retirement is not justified.

13) In rejoinder, Mr. Pai submits that there is marked distinction between the facts of the case in *Jaisingh Barku Ghogare* (supra), in which issue of perversity was framed in remanded proceedings and was answered against the sugar factory. That the sugar factory thereafter led evidence before the Labour Court and the evidence led before the Labour Court was considered while setting aside the punishment of dismissal. That therefore compensation awarded to Mr. Jaisingh Barku Ghogare cannot be taken into consideration for deciding the present Petition.

14) Rival contentions urged on behalf of the parties now fall for my consideration.

15) In the present case, Respondent was issued two chargesheets on 19 November 1999 and 26 November 1999. The main charges are to be found in the first chargesheet dated 19 November 1999 and the principal charge levelled against the Respondent was absence for 240 days from 17 November 1998 to 19 July 1999. Respondent did not dispute the position that he did not attend duties for 240 days during 17 November 1998 to 19 July 1999. He however sought to raise a defence that he was unwell during that period and that he had applied for medical leave. The Enquiry Officer rejected the defence and held that leave applications of the Respondent were rejected by the officials of the sugar factory. The Enquiry Officer considered leave rules applicable to

the Petitioner and has recorded a finding that Respondent was well versed with the said rules.

16) The enquiry is held to be fair and proper by the Labour Court vide order dated 24 August 2007. Ordinarily, the Labour Court ought to have framed two preliminary issues relating to fairness in enquiry and perversity in the findings of the Enquiry Officer. However, for the reasons unknown, the Labour Court framed only one preliminary issue relating to fairness in the enquiry and answered the same in favour of the Petitioner by order dated 24 August 2007.

17) After the enquiry was held to be fair and proper, Respondent led evidence by examining himself. Petitioner's evidence through witness Rajendra Vithalrao Jangale was restricted to production of proceedings of enquiry, and the said evidence was not aimed at proving misconduct before the Labour Court. This was because the Labour Court was yet to determine the issue of perversity in the findings of the Enquiry Officer. Apart from Issue No.1 relating to fairness in the enquiry, the Labour Court framed only following Issues:

2. Whether the respondent prove the charges levelled against complainant are established on the basis of evidence recorded in the enquiry and/or before the Court?
3. Whether the complainant prove that his services were terminated illegally by respondent?
4. Whether complainant is entitled for the reliefs as prayed or otherwise?
5. What order?

18) Thus, no issue was framed by the Labour Court about perversity in the findings of the Enquiry Officer. Issue No.2 framed by the Labour Court was about establishment of charges levelled against the Respondent on the basis of evidence recorded in the enquiry. While one may contend that Issue No.2, though not couched in a desirable language, was actually aimed at conducting enquiry into the perversity in the findings of the Enquiry Officer, it is not possible to agree with such contention. This is because Issue No.2 entailed enquiry into establishment of charges on the basis of findings '*recorded in the enquiry*' and/or '*before the Court*'. Be that as it may. The framing of the issue itself was erroneous. No opportunity was granted to the Petitioner to lead evidence before the Labour Court. The Labour Court ought to have answered the issue of perversity while passing order dated 24 August 2007 which would have given an opportunity to the Petitioner to justify their action by leading evidence. The Labour Court however followed the procedure unknown to law by treating evidence of Petitioner's singular witness as if the same was led for justifying action taken against the Respondent before the Labour Court. As observed above, the witness was not examined by the Petitioner to justify its action as the Labour Court, at that stage, had not held the findings of the Enquiry Officer to be perverse.

19) The case thus involves a situation where Petitioner is denied an opportunity to justify its action after the Labour Court has arrived at a finding that the charges could not be established on the basis of evidence appearing in the proceedings of enquiry. In *Workmen of The Motipur*

Sugar Factory Private Ltd. (supra), the Apex Court has held in para-12 as under:

12. If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the enquiry has in fact been held. We must therefore reject the contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the tribunal.

20) In my view therefore, the order of the Labour Court deserves to be set aside on account of denial of opportunity to the Petitioner to justify its action by leading evidence.

21) Even if the error committed by the Labour Court in not framing and deciding the issue relating to perversity in the findings of the Enquiry Officer is to be momentarily ignored, I am otherwise not satisfied with the ultimate conclusion reached by the Labour Court about charge of unauthorised absence not being proved on the basis of evidence produced in the enquiry.

22) The principal charge faced by the Respondent was unauthorised absence for a continuous period of 240 days. As observed above, Respondent has not disputed that he did not attend duties in those 240 days. However, he attempted to justify his absence by contending that he was unwell and relied upon medical certificates. Thus, absence from duties for continuous period of 240 days is not disputed by the Respondent.

23) When an employee is absent from duty for few days and produces a medical certificate justifying his/her absence, strict action may not be warranted even if there is no strict adherence with the leave rules. However, when absence is for unduly long period, like in the present case, and when employee raises the pretext of medical treatment, the Courts and Tribunals must be cautious about the defence so taken and only in genuine case of sickness, unauthorised absence for a long period can be condoned. Respondent was working as a Clerk in the Petitioner-sugar factory. He remained absent continuously for a period of 8 long months. The absence was from 17 November 1998 to 19 July 1999. To justify his absence, Respondent relied upon three Medical Certificates which were issued on 5 December 1998, 12 January 1999 and 28 January 1999. In those medical certificates, the nature of sickness was indicated as '*tennis elbow*' and '*lower backache with acute sprain*'. It is not the case of the Respondent that he was hospitalised even for a day during the period of 240 days. More interestingly, all the three Certificates dated 5 December 1998, 12 January 1999 and 28 January 1999 were submitted with the Petitioner-sugar factory together on 30 July 1999. This means that alongwith the leave applications, Respondent had

not produced the medical certificates and the same were produced together on 30 July 1999. The Labour and Industrial Courts have completely ignored this vital aspect while granting relief in favour of the Respondent. If Respondent was really sick and had already procured certificates dated 5 December 1998, 12 January 1999 and 28 January 1999, he would have dispatched the same to the Petitioner-sugar factory contemporaneously and would not have waited for 7 to 8 months for production of those certificates. This creates an impression that the certificates were subsequently procured to justify absence.

24) The Labour and Industrial Courts have interfered in the order of dismissal by recording a finding that Petitioner did not communicate to the Respondent that his leave applications were rejected. These findings recorded by the Labour and Industrial Courts are perverse to the core. It is established in the enquiry that decisions on leave applications were taken and the same were rejected. It was not the responsibility of the employer to communicate to the Respondent the outcome of leave applications. On the other hand, it was the responsibility of the employee to at least make an enquiry about the status of requests made by him for grant of leave. An employee cannot presume that once leave applications are submitted, the same must necessarily be granted. Therefore mere non-communication of decision on leave applications cannot be a reason for justifying the absence of the employee.

25) The Labour and Industrial Courts have also taken into consideration the factor of availability of leave in the account of the

Respondent to cover some period. It appears that there was leave available in the account of the Respondent to cover the period between 17 November 1998 to 4 February 1999. In respect of second period from 5 February 1999 to 19 July 1999, Respondent had requested for 'leave without pay', meaning thereby that sufficient leave was not available for covering the second period. This aspect is also glossed over by the Labour and Industrial Courts, who have erroneously assumed that the entire period of absence could have been covered by the available leave. Even otherwise, mere availability of leave in the account does not create a right in favour of the employee to avail that leave. Even if leave is available, the same needs to be applied for and sanctioned by the employer. In the present case, the Respondent did not bother to even enquire whether the leave was sanctioned or not. He simply went missing for 8 long months and subsequently resurfaced by submitting medical certificates in July 1999 to justify his absence.

26) The nature of sickness indicated in the medical certificates relied upon by the Respondent also does not justify his absence for continuous period of 8 months.

27) Considering the above position, I am unable to uphold the findings recorded by the Labour and Industrial Courts that Respondent has not committed any misconduct. The misconduct of absence from duties is clearly established. Mr. Pai has fairly not pressed other charges relating to tempering of attendance muster and I need not delve deeper into those charges. Suffice it to observe that the principal charge of unauthorised absence for 240 days is clearly proved against the

Respondent. Even if it is assumed that Respondent was unwell, he ought to have followed leave rules and in any case, ought to have been diligent enough in submitting contemporaneous leave applications and producing contemporaneous medical certificates. This Court is otherwise not satisfied that the Respondent could have been prevented from attending duties for 8 long months on account of alleged ailments of tennis elbow or lower backache. The Respondent therefore cannot be given a complete clean chit in respect of the charges levelled against him.

28) The next issue for consideration is the proportionality of penalty imposed on the Respondent. The charge ultimately held to be established in view of above discussion relates to only unauthorised absence. The other charges are not pressed by the employer before me. The Respondent worked with Petitioner-sugar factory from 1986 to 2002 and had rendered about 16 long years of service. No doubt, he was negligent in not following the rules and remaining unauthorisedly absent for considerable period of time. However, punishment of dismissal from services is not proportionate to the misconduct of unauthorised absence proved against him. The Petitioner could have imposed some other penalty on the Respondent. I am therefore of the view that punishment of dismissal from service is shockingly disproportionate to the misconduct of unauthorised absence for a period of 240 days. It may be that the Petitioner-sugar factory took into consideration other charges for selecting the extreme penalty of dismissal from service. Now that the other charges are not proved before me, the punishment of dismissal appears to be shockingly

disproportionate to the misconduct of unauthorised absence even for 240 days.

29) The next issue for consideration is the nature of relief that needs to be granted in favour of the Respondent once a satisfaction is reached that the punishment of dismissal is not commensurate to the misconduct ultimately found to be established against the Respondent. The Labour Court had awarded 50% backwages, which order is modified by the Industrial Court by awarding 100% backwages to the Respondent. Respondent was dismissed from service on 22 February 2002. He has crossed the age of retirement on 25 December 2021. Since some misconduct is proved against the Respondent, there is no question of awarding full backwages to him. This Court has not given a clean chit to the Respondent in respect of the charges levelled against him. In that view of the matter, full backwages cannot be awarded to the Respondent and reliance by Mr. Bhutekar on judgment of the Apex Court in ***Deepali Gundu Surwase*** (supra) is inapposite. Similarly, it is not necessary to go into the issue of availability of gainful employment to the Respondent since backwages are not being granted to the Respondent. However what needs to be granted in favour of the Respondent is lump cum compensation.

30) Mr. Pai has strenuously contended that backwages ought to have been otherwise denied to the Respondent on account of some gainful employment available to him. In his cross-examination, Respondent gave admission of possessing agricultural land and earning Rs.10,000/- to Rs.12,000/- per year by working as a labourer. He has

relied on judgment of the Apex Court in **North East Karnataka Road Transport Corporation** (supra) in support of his contention that even agricultural income needs to be taken into consideration for presuming gainful employment. In that judgment, the Apex Court has held that even agricultural income needs to be taken into consideration for deciding the issue of quantum of award of backwages. Mr. Pai has also highlighted an admission on the part of the Respondent in his cross-examination conducted on 12 December 2011 wherein he admitted that "मी काठी घेवून चालतो कारण मला अपघात झाला. माझ्या पायाला अपंगत्व आले आहे माझा हा अपघात दोन वर्षापूर्वी झाला. मला मोलमजुरी करता येत नाही" (*I walk with a stick because I have suffered an accident. I have suffered from locomotive disability in respect of my legs. The accident occurred two years ago. I cannot work as a labourer*). Highlighting these admissions, Mr. Pai has contended that since Respondent was rendered unfit since 2009, backwages otherwise cannot be awarded to him during 2009 to 2021. Even this aspect needs to be borne in my mind while deciding the nature of relief that can be granted in favour of the Respondent.

31) I have considered the nature of misconduct proved against the Respondent, the number of years of service put in by him (*16 years*), number of years left for retirement (*19 years*), possession of agricultural land and earning of some income by the Respondent and disability suffered by him due to accident. Considering the above factor, in my view, it would be appropriate to award lumpsum compensation of Rs.15,00,000/- to the Respondent in lieu of reinstatement and backwages. I am not inclined to take into consideration the amount awarded in the case of **Jaisingh Barku Ghogare** (supra) by this Court

towards compensation since the facts in both the cases are entirely different. In *Jaisingh Barku Ghogare*, Petitioner-sugar factory was provided an opportunity to justify its action by leading evidence before the Labour Court after findings in the enquiry were held to be perverse. Thus, even after availing opportunity of justifying action by leading evidence before the Labour Court, Petitioner could not have established misconduct of Mr. Jaisingh Barku Ghogare. This opportunity is denied to the Petitioner in the present case. Also, Respondent is not given a clean chit by this Court and some misconduct is held to be proved against him. In my view therefore, the amount of compensation awarded in the case of *Jaisingh Barku Ghogare* cannot be taken into consideration for determining the quantum of compensation awarded to the Respondent in the present case.

32) As observed above, ends of justice would meet if lumpsum compensation of Rs.15,00,000/- is awarded to the Respondent towards full and final settlement of all disputes with the Petitioner.

33) I accordingly proceed to pass the following order:

(i) Judgment and order dated 18 July 2014 passed by the 4th Labour Court, Pune in Complaint (ULP) No. 128 of 2002, as well as judgment and order dated 10 March 2016 passed by the Industrial Court, Pune in Revision Application (ULP) Nos. 65 of 2014 and 75 of 2014 are set aside and modified.

(ii) Petitioner-sugar factory shall pay to the Respondent-employee lumpsum compensation of Rs.15,00,000/- in lieu of reinstatement and backwages within a period of 4 weeks.

(iii) Except lumpsum compensation so awarded, the Respondent shall not be awarded any other service-related benefits from the Petitioner.

(iv) If the awarded compensation is not paid within the stipulated period, the same shall carry interest @ 8% p.a. after expiry of period of 4 weeks.

34) With the above directions, the Petition is partly allowed and disposed of.

[SANDEEP V. MARNE, J.]

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signed by
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