

MHIC340000932022



Presented on : 16.11.2022
Registered on : 16.11.2022
Decided on : 04.08.2026
Duration : Y M D
03 08 18

IN THE COURT OF MEMBER INDUSTRIAL COURT, CHANDRAPUR
(Presided Over by Ravikant T. Sakhare)

Revision (ULP) No. 17 of 2022
Exhibit No.: O/02

Petitioner : Vandana Bajrang Madse
(Original complainant) Aged about- 46 years, Occu- Service,
R/o. C/o Shri Vishwanath Raut
Po- Dhanora (Ghatge),
Tah.- Manora, Dist.- Washim.

V E R S U S

Respondent : Maharashtra State Road Transport
Corporation, Chandrapur Division
Chandrapur, Through its Divisional
Controller, office at Durgapur road,
Tukum, Tah. & Dist.- Chandrapur.

Advocates Appeared

Shri V. M. Shikare
Shri U. V. Deshpande

Representative for Petitioner.
Advocate for Respondent.

CLAIM: - Revision u/s 44 of the Maharashtra Recognition
of Trade Union and Prevention of Unfair Labour
Practices Act, 1971

O R D E R

(Passed on this 4th Day of August, 2026)

1) This is a revision under section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971, preferred by the petitioner/ original complainant feeling aggrieved and dissatisfied by judgment and order dated 06.07.2017

passed by the Judge, Labour Court, Chandrapur, in Comp. ULP No. 94/2016, whereby claim for back wages was dismissed. She has not challenged rest of the judgment, whereby the complaint was allowed directing her reinstatement with continuity of service.

2) For the sake of convenience, the parties are hereinafter referred to as 'the complainant' and 'the respondents', according to their original status in Comp. (ULP) No. 94/2016.

3) At outset, it is case of the complainant that, she was working as a Peon with the respondent corporation since the year 2006 continuously with clean and unblemished service record. She was dismissed from service on 31.10.2014. She preferred Comp. ULP No.94/2016. Vide Judgment Part-01 dated 05.05.2017, Judge, Labour Court, Chandrapur recorded his findings on preliminary issues to the effect that, enquiry conducted against the complainant was not fair and proper and findings of the enquiry officer were perverse. The respondent corporation was permitted to prove alleged misconduct against the complainant by adducing evidence before the Court but, no evidence was adduced by the respondent corporation. Vide final judgment and order dated 06.07.2017, trial Court directed the respondent corporation to reinstate the complainant with continuity of service. However, claim for back wages is rejected. The complainant was reinstated with continuity of service on 25.09.2018. The respondent corporation delayed her reinstatement. She has preferred IDA case No. 21/2022 against such delayed reinstatement. Trial Court erred in not granting back wages to the complainant, as she was not engaged in any gainful employment during period of dismissal. There is no evidence on behalf of the respondent corporation to establish that, the complainant was in gainful employment during that period of dismissal. Trial Court ought to have

granted full back wages to the complainant but, has not considered these aspect, while rejecting her claim for back wages. On these grounds, she has prayed for modification of judgment and order dated 06.07.2017 and for grant of back wages to her from date of her dismissal till date of her reinstatement.

4) Revision is resisted on behalf of the respondent corporation without preferring counter revision to assail impugned judgment and order passed by the Judge, Labour Court, Chandrapur. The respondent corporation came with a case that, the complainant has failed to prove that, she was not in gainful employment. Burden to prove that she was not in gainful employment was lying upon her, which she has failed to discharge. Trial Court has properly appreciated these aspect while rejecting claim of the complainant for back wages. They are further coming with a case that, the complainant is habitual in remaining absent on duty. She was subjected to an enquiry and was dismissed from service on account of absenteeism. Trial court has not appreciated these aspect while allowing complaint. On these grounds, the respondent corporation has prayed for rejection of the revision and dismissal of complaint.

5) Points for determination which arose before me for consideration are reproduced below along with my findings thereon and respective reasoning thereto;

No	Points For Determination	Findings
1)	Is impugned Judgment and order dated 06.07.2017 passed by the Judge, Labour Court, Chandrapur in Comp. (ULP) No. 94/2016 suffers from any material legal infirmity or any error apparent on the face of record?	NO.

2)	Is impugned Judgment and order dated 06.07.2017 passed by the Judge, Labour Court, Chandrapur in Comp. (ULP) No. 94/2016 warrants interference ?	NO.
3)	Is the complainant entitled for the relief as prayed for?	NO.
4)	What order?	Revision is rejected, as per final order

REASONING**6) AS TO POINTS NO. 01 TO 04:-**

Heard both the parties and perused the record. Original record and proceedings of Comp. (ULP) No. 94/2016 was called upon. Due aid of the said original record and proceedings was taken at the time of hearing of the revision.

7) The complainant admittedly is an employee of the respondent corporation, working as a Peon since the year 2006 and was terminated from service on 31.10.2014. It is also not disputed that, she has preferred Comp. ULP No. 94/2016 which was allowed vide final judgment and order dated 06.07.2017, whereby, the respondent corporation was directed to reinstate the complainant with continuity of service but, claim for back wages was rejected. It is matter of record that, the respondent corporation has not preferred revision, challenging findings of trial court on preliminary issues whereby, it was observed that, enquiry conducted against the complainant was not fair and proper and findings of enquiry officer were perverse. The respondent corporation has further not assailed judgment of trial court whereby the complaint was allowed directing reinstatement of the complainant with continuity of service. The respondent corporation through argument, without preferring separate revision, is trying to assail findings of trial court on preliminary issues and impugned final judgment and order,

which is not permissible. The respondent corporation has not pointed out any flaw on the part of trial court while recording findings on preliminary issues and passing impugned final judgment and order. Consequently, in my opinion, finding of trial court on preliminary issues and final judgment and order of trial court allowing the complaint and directing reinstatement of the complainant with continuity of service, can not be interfered merely on oral submissions of the respondent corporation without pointing out any material legal infirmity or error apparent on record.

8) Trial court through paragraph No.11 of the complaint has observed that, the complainant is claiming back wages but, she has not recited in her complaint that, after dismissal of service, the complainant was not engaged in any gainful employment on any other place. Under such circumstances, the complainant has failed to establish her case for grant of relief of back wages. Therefore, he is not entitled to claim back wages. With these observations, trial court has rejected claim of the complainant for back wages on the pretext that, there is no averment and proof about not being engaged in any gainful employment after dismissal from service. Observation of the trial court in verbatim made in Paragraph No. 11 are reproduced below for clarity;

“Complainant is also claiming that he should be awarded back wages. **But in complaint no where it is mentioned that after dismissal of service, complainant was not engaged in any gainful employment at any other place.** Under such circumstances, it can not be stated that complainant has established his case for grant of relief of back wages. Hence, he is not entitled to claim back wages”.

9) Perusal of record reveals that, the complainant through her pleadings in entire complaint has not made any averments to the effect that after her dismissal from service, she was not engaged in any gainful employment. Representative of the complainant was called upon to point out her pleading in the complaint about not being engaged in gainful employment or to point out how findings of trial court are not in consonance with available record. On personal verification, I could not find any pleading on part of the complainant to this effect.

10) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments. In present case at hand the complainant did not plead nor made a simple statement before trial court either through pleadings of complaint or through evidence that she was not gainfully employed during period of her dismissal. Consequently, in my opinion, burden of proof to prove that the

complainant was in gainful employment will not shift upon the respondent corporation. In absence of pleading on the part of the complainant to the effect that, she was not in gainful employment, in my opinion, observation of trial court in paragraphs No. 11 and conclusion drawn by it to effect that, for want of pleadings and proof, the complainant is not entitled for relief of back wages is according to available record and settled principles of law. Accordingly, in my opinion, impugned Judgment and order dated 06.07.2017 passed by the Judge, Labour Court, Chandrapur in Comp. (ULP) No. 94/2016 declining relief of back wages to the complainant do not suffer from any material legal infirmity or any error apparent on the face of record.

With these reasoning, I answer points No.01 in negative.

11) In view of my findings on points No.01 as there is no material legal infirmity or any error apparent on face of record in impugned order Judgment and Order dated 06.07.2017 passed by Judge, Labour Court, Chandrapur in Comp. (ULP) No. 94/2016, interference in impugned final judgment and order is not warranted. With these reasoning, **I answer Point No.02 in negative.**

12) In view of my findings on point No.01 and 02, as as there is no material legal infirmity or any error apparent on face of record in impugned order Judgment and Order dated 06.07.2017 passed by Judge, Labour Court, Chandrapur in Comp. (ULP) No. 94/2016 and interference therein is not warranted, the complainant is not entitled for any relief as sought by her. With these reasoning, **I answer Point No.03 in negative.**

13) In view of my findings on point No.03, as the complainant is not entitled for any relief as sought by her, present revision is liable to be rejected. In peculiar circumstances of case, in my opinion, both the

parties shall bear their own costs for present revision. With these reasoning, **in an answer to point No.04**, I pass the following order;

O R D E R

1)	Revision (ULP) No. 17/2022 is hereby rejected.
2)	Copy of this order along with R. & P. of Comp. (ULP) No. 94/2016 be sent to Judge, Labour Court, Chandrapur for information.
3)	Both the parties shall bear their own costs for present revision.

(Ravikant T. Sakhare)

Member,

Date : 04.08.2026

Industrial Court, Chandrapur.

Argued on	:	22.07.2026
Dictated on	:	03.08.2026
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Transcribed by	:	Shri. K.C. Durge Stenographer

(Ravikant T. Sakhare)
Member, Industrial Court, Chandrapur.