

**Sayed Anwar Vs. Divisional Controller, M.S.R.T.C. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/362018](http://sooperkanoon.com/362018)

**Court :** Mumbai

**Decided On :** Jun-22-2000

**Reported in :** 2000(4)ALLMR107; [2000(86)FLR823]; (2001)IIILLJ803Bom

**Judge :** R.J. Kochar, J.

**Appeal No. :** A.S.C.J. W.P. No. 4115/1989

**Appellant :** Sayyed Anwar

**Respondent :** Divisional Controller, M.S.R.T.C. and ors.

**Disposition :** Appeal allowed

**Judgement :**

**R.J. Kochar, J.**

1. The petitioner employee is aggrieved by the order of the Labour Court dated January 23, 1989 denying him back wages during the period between the date of dismissal and the date of the order dated January 23, 1989. It appears that the petitioner was in employment of the respondents as a Mechanic from April 1, 1967. He came to be dismissed from employment with effect from May 18, 1985. At that time he was working as a Driver. It is an admitted fact that he was dismissed for his act of remaining absent unauthorisedly and without getting his leave sanctioned. It appears from the record that he remained absent on two

occasions and when he was called upon to submit his explanation he explained that he was ill and was hospitalised on both the occasions. It appears that he had submitted medical and hospital record to prove his illness which was a ground beyond his control. It further appears that the respondents held an ex parte inquiry.

2. The Labour Court has recorded a finding that such an ex parte inquiry was in breach of the principles of natural justice. The Labour Court has further recorded a finding that the dismissal of the petitioner as illegal and improper and amounted to an unfair labour practice within the meaning of Item 1 of Schedule IV of the Act. In the aforesaid circumstances, the Labour Court granted reinstatement with continuity of service after holding the order of dismissal illegal, improper and an unfair labour practice. This order of the Labour Court is not challenged by the respondents Corporation. It further appears that the petitioner has been reinstated pursuant to this order.

3. The Labour Court has denied the relief of backwages to the petitioner misconstruing and misreading the statement made by the Advocate who conducted the matter before the Labour Court. The statement made by the Petitioner's advocate is as under:

'.... The Learned Counsel for the complainant Shri Bhosale has conceded that the complainant is not entitled for back wages for his absence from duty till the date of order of dismissal.'

I fail to understand how this statement can be construed as an admission or concession that the petitioner has given up his claim for backwages. What the learned Advocate has clearly admitted is that for the period during which the petitioner remained absent he was not entitled to get wages till the date of his dismissal. Obviously on this ground the Labour Court could not have deprived the petitioner of the relief of back wages. The Labour Court has not given any other reason or ground to deny the normal relief of back wages to the petitioner when the order of dismissal was held to be an unfair labour practice. It is now well settled that if an order of termination or dismissal or discharge or retrenchment is set aside as illegal, improper and as an unfair labour practice the normal relief of

reinstatement with full back wages and continuity of service must follow unless the employer pleads and proves and brings on record cogent material to enable the Labour Court to depart from the aforesaid normal rule. In the present case I do not see any such pleadings and proof to enable the Labour Court to have departed from the normal rule. The Labour Court has erroneously deprived the petitioner of the back wages for the intervening period from the date of dismissal till the date of the order passed by it. There was absolutely no reason and justification for the Labour Court to have denied the relief of back wages to the petitioner.

4. The petitioner was employed as a regular driver under the Corporation. In his evidence he has stated that he was getting some casual work after his dismissal. He has also made a statement that he was approaching some garages for employment. He has also given what reaction was given by the garages. In his evidence he has made a statement that the garage people did not like the ex-employees of the Corporation (S.T.). It appears that they are averse to employ the ex-S.T. employees. For whatever reasons the petitioner has remained unemployed. His efforts to get some alternative job is not denied. He has also candidly admitted that sometimes he gets some casual work. To get some casual work is not an alternative employment. The petitioner was trying to meet two ends and he was trying to keep his soul and body together by earning some livelihood for himself and for his family members. Such casual employment cannot be used to deny the relief of full back wages to the employees who are otherwise entitled to get the whole relief.

5. In the aforesaid circumstances I quash and set aside the order of the Labour Court, denying the petitioner the normal relief of backwages. I hold that the petitioner is entitled to get full back wages from the date of his dismissal till the date of his reinstatement. I, therefore, allow the petition and make the rule absolute in terms of prayer Clause (B). No orders as to costs. The Respondent Corporation is directed to compute the petitioner's back wages and other consequential benefits and pay the same to him within three months from today.