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the petitioner in respect of the suit house, but that of the Confraria of the Church, and no material is on record to prima facie establish that such claim is bona fide.

13. The other aspect which is also borne out from the pleadings is that the respondent No. 1 himself has purchased an adjoining plot of the same Confraria and that there is no reference to any claim of the so called mundkarship in respect of the suit house. Considering that there is no supporting material produced by the respondents to substantiate his claim that he is a Mundkar of the suit house, the learned Judge was not justified to frame the Issue No. 6. The issue has been framed mechanically without adverting to the well settled principles of law as enumerated hereinabove. As such, the learned Judge erroneously refused to allow the application filed by the petitioner to strike off Issue No. 6.

14. In view of the above, I pass the following :

ORDER

- (i) The impugned Order dated 30-6-2008 is quashed and set aside.
- (ii) Issue No. 6 in Spl. Civil Suit No. 36/2002/II stands deleted.
- (iii) Rule in the above terms.
- (iv) Petition stands disposed of accordingly with no orders as to costs.

Order accordingly.

ORDER OF DENIAL OF BACKWAGES : VALIDITY

(Anoop V. Mohta, J.)

TANAJI D. CHAVAN

Petitioner.

vs.

PARTNER, M/S PLASTICA INTERLINKED
INDUSTRIAL ESTATE

Respondent.

Industrial Disputes Act (14 of 1947), S. 17-B — *Backwages on reinstatement — Substantial material on record to justify the order of no backwages as the petitioner was earning adequate amount during the period — Mere denial of the Petitioner is not sufficient — Employer discharged its burden to show that the employee was gainfully employed during the said period — Order of denial of backwages cannot be said to be invalid. (Paras 8 and 9)*

For petitioner : *Mahendra Agavekar*

For respondent : *Vivek Kantawala* instructed by *Kantawala and Co.*

List of cases referred :

1. *Reetu Marbles vs. Prabhakant Shukla, 2010(3) Mh.L.J. (S.C.) 343 = (2010) 2 SCC 70* (Para 4)
2. *General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon vs. Bharatlal and anr., (2011) 1 SCC 635* (Para 8)

ORAL JUDGMENT :— The petitioner has challenged impugned order dated 17th January, 1998 only to the extent of denied of entire backwages while granting the order of reinstatement. The petitioner admittedly never joined the service.

2. The Court after considering the material placed on record by the rival parties made a clear finding in favour of the petitioner so far as the order of reinstatement. There is no challenge by the respondent. The only question that

W. P. No. 2045 of 1999 decided on 13-7-2012. (Bombay)

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needs to be considered now is whether the Court has committed an error while denying the backwages, though awarded the reinstatement.

3. "No work no pay", in my view, is the basic formula which should be taken note of while granting the backwages, though there is order of reinstatement. While considering the basic provisions and settled law relating to the backwages which cannot be ignored. The proviso of section 17B of the Industrial Dispute Act, 1947 (for short I.D. Act) is quite clear which reads thus :

"Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

4. The submissions based upon the case of *Reetu Marbles vs. Prabhakant Shukla*, 2010(3) Mh.L.J. (S.C.) 343 = (2010) 2 SCC 70 to say that the petitioner at least entitled for 50% backwages, just cannot be accepted as a principle of law without considering the factual aspect and the material on record to show that whether the petitioner and/or such worker was in gainful employment during the period in question or not.

5. The Apex Court has observed by referring to the earlier Judgments as under :

"17. A perusal of the award also shows that the respondent did not place on the record of the Labour Court any material or evidence to show that he was not gainfully employed during the long spell of 15 years when he was out of service of the appellant."

6. Therefore, ultimately the Court will have to consider the material placed on record by the parties and then grant backwage either in full or in part. It is settled now that in every matter it is not necessary that when there is an order of reinstatement, the payment of backwages should follow basically when admittedly the workers/petitioner never contributed anything or even work for industry or company.

7. The learned Judge while rejecting the claim of backwages has observed as under :

"30. The second party workmen had earned wages during the idle period. He was without any gainful employment during the intervening period and in this regard, the first party company had got sufficient material on record to establish that the workman was gainfully employed. He has purchased two auto-rickshaws one was driven by him and another auto-rickshaw was given on hire and from this, he used to get daily income of ₹ 200/- by driving the auto-rickshaw. The charge-sheeted employee had purchased auto-rickshaw bearing No. MMC-7475 and it was given by him since the year 1981. The R.T.O. Officer has produced a book in which it was seen that the auto-rickshaw was registered in his name in the name of Shri T. D. Havan vide Exh-C-24. The Private Detective Agency had also confirmed that the second party workman was having the auto-rickshaw and he was earning ₹ 100/- per day from the auto-rickshaw since from 11-8-1981. The auto-rickshaw was registered in his name from 15-1-1981. The auto-rickshaw was registered in his name

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from 15-1-1981 and this was confirmed by Pvt. Detective Agency appointed by the company.”

8. Therefore, in the present case, there is a substantial material on record to justify the order of no backwages as the petitioner was earning adequate amount during this period as referred which is more than the salary by plying auto-rickshaw. Mere denial of the petitioner is not sufficient. The employer has discharged its burden to show that the employee was gainfully employed during this period. *General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon vs. Bharatlal and anr.*, (2011)1SCC 635.

9. Once this finding is given and which cannot be stated to be perverse and/or contrary to record, so there is no reason to interfere with the said aspect. The reasoning so given, in my view, falls within the ambit especially which is carved out in all the Judgments relating to grant of backwages in the case of order of reinstatement. That ultimately for the Court, based upon the evidence, to consider to award backwages though there is an order of reinstatement. There cannot be any fixed formula. Therefore, I see there is no reason to accept the contention of the learned counsel appearing for the petitioner that the Award is bad and/or need any interference. The parties could not settle the matter though adjourned for the same.

10. However, taking over all view of the matter, it is desirable to grant a lump sum amount as full and final compensation to close the issue for all purposes and also for the reason that the petitioner in spite of the order of reinstatement never joined the services till this date. There is no intention to even to join the service. No one can compel the petitioner to work instead of favourable order in his favour.

11. The petitioner was getting ₹ 750/- per month. By order dated 17th January, 1998, the directions to reinstate by taking over the dismissal order dated 30th October, 1979, the arrears amount comes to ₹ 1,62,000/-. In the present facts and circumstances of the case, the matter is disposed of by granting a lump sum amount to the extent of 20% of alleged arrears i.e. ₹ 32,000/- that will meet the ends of justice.

12. The Writ Petition is disposed of accordingly. Rule discharged. No order as to costs.

Order accordingly.

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT,
SECTION 55 : SCOPE

(Mrs. Ranjana Desai and R. G. Ketkar, JJ.)

SACHINDRA UMANATH KOTIAN

Petitioner.

vs.

MUNICIPAL CORPORATION OF GREATER MUMBAI

Respondents.

and others

(a) Maharashtra Regional and Town Planning Act (37 of 1966), S. 55

— *Unauthorised development of temporary nature — Removal of — Section 55 does not contemplate any hearing.*

W. P. No. 557 of 2011 decided on 26-4-2011. (O.O.C.J., Bombay)