

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 670 OF 1995

Shaikh Rashid s/o Shaikh Bashir,
Age Major, Occ. unemployed,
R/o House No. 47, Baijipura,
Aurangabad, Taluka and District
Aurangabad.

... Petitioner

VERSUS

- 1] The Chief Executive Officer,
Zilla Parishad, Aurangabad
- 2] The Executive Engineer,
Irrigation Department,
Zilla Parishad, Aurangabad.
- 3] The Deputy Engineer (Mechanical)
Ground Water Survey and Development
Agency, Zilla Parishad, Aurangabad.
- 4] The State of Maharashtra ... Respondents

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Mr. H.A. Joshi , Advocate holding for
Mr. Pradeep G. Deshmukh, Advocate for petitioner
Mr. Dilip Bankar Patil , Advocate for respondent Nos. 2 & 3
Mr. U.H. Bhogle , A.G.P. for respondent No. 4 / State
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CORAM : RAVINDRA V. GHUGE, J.

DATE : 23rd JANUARY, 2015

ORAL JUDGMENT :

1. This petition is filed under Article 227 of the Constitution of India. By order dated 15-02-1995, this petition was admitted. It is

evident from the record that interim relief was not granted to the petitioner.

2. Shri Joshi learned Advocate for the petitioner has advanced his submission at length, which can be summarised as follows :-

a] The petitioner was appointed as a driver on a permanent vacant post on 30-04-1986.

b] He was terminated from employment by order dated 30-04-1990.

c] He has put in 240 days in the continuous and uninterrupted service of the respondent and has attained deemed confirmation.

d] His termination dated 30-04-1990 is against Section 25 (B), (F),(G) of the Industrial Disputes Act, 1947 (here-in-after referred to as the '1947, Act').

e] Juniors have been retained in employment and the services of the petitioner have been terminated.

f] His complaint (ULP) No. 193 of 1990 preferred before the Labour Court at Aurangabad for challenging his termination has been erroneously dismissed. The said judgment dated 10-12-1991 impugned in this petition is unsustainable in law.

g] His revision petition (ULP) No. 1 of 1992 preferred before the Industrial Court, at Aurangabad has been erroneously rejected.

h] The petitioner is about 53 years old today and is in need of employment.

i] The petitioner was not gainfully employed from the date of his termination till this date.

j] There are many vehicles available with the respondent- Zilla Parishad and the petitioner can be accommodated as a driver on any such vehicle.

k] The evidence adduced before the Labour Court has not been properly assessed by the Labour Court as well as by the Industrial Court.

l] The errors committed by the Labour Court in delivering the impugned judgment dated 10-12-1991, have not been cured by the Industrial Court vide its judgment dated 30-09-1994.

m] Both the judgments deserve to be quashed and set aside and the petitioner deserves to be reinstated in employment with continuity and full back-wages.

3. Shri Bankar Patil, learned Advocate appearing for respondent Nos. 2 & 3 has opposed the petition. His submissions are summarised as follows :-

a] This petition is filed purely under Article 227 of the Constitution of India and Article 226 has not been invoked.

b] The Labour Court has arrived at finding on facts which have been confirmed by the Industrial Court.

c] The jurisdiction of this Court is akin to the revisional jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971.

d] The petitioner was specifically directed by the Labour Court to produce his appointment orders on record to indicate that he was working continuously and in the uninterrupted service of the respondent.

e] The petitioner instead of recording his examination-in-chief, filed a carbon copy of a previous affidavit dated 05-05-1990 in lieu of his examination-in-chief.

f] The petitioner produced typed copies of the appointment orders without placing on record the original appointment orders to establish that he was continuously working with the respondents.

g] The burden lies on the employee to prove continuous and uninterrupted service.

h] The appointment order dated 30-04-1986 indicates that the petitioner was engaged as a driver on daily wages purely on a temporary basis till the regular driver resumed duties.

i] Earlier Driver namely Babu was directed to give the charge of the vehicle to the petitioner.

j] He was appointed as a daily-wager for only three months at a time followed by a break/ gap of one day in employment.

k] By order dated 30-04-1990, the petitioner was discontinued as a daily-wager after paying him retrenchment compensation and one months pay in lieu of notice period under Section 25 F of the 1947 Act.

l] Recruitment Rules are applicable to the respondents-establishments.

m] The petitioner could not have been absorbed or confirmed in employment de-hors the recruitment rules as it would amount to a back door entry.

n] The Industrial Court upon scrutinising the record and proceedings before the Labour Court has come to a conclusion that despite adequate opportunity, the petitioner

did not adduce proper evidence to establish his case. Both the impugned judgments are well reasoned and no perversity has been pointed out by the petitioner.

o] This petition deserves to be dismissed.

p] The petitioner is out of employment for the last 25 years and no employee can be foisted upon the respondents.

4. I have considered the submissions of the learned Advocates for the respective sides. I have gone through the petition paper book with their assistance.

5. It cannot be disputed that the appointment order indicates that the petitioner was a daily-wager and appointed as a driver purely on a temporary basis till the regular driver resumed duties. There was a one day break in the tenure of daily engagements of the petitioner. After every three months, he was given a break of one day. Contentions that junior drivers have been retained in employment and the petitioner has been terminated, are merely averments set out in the complaint and have not been proved through oral and documentary evidence.

6. The one day break in employment can be clearly visualised as being an artificial break. The Apex Court in the matter of **H.D.Singh Vs. Reserve Bank of India**, reported at AIR 1986 SC 132 has deprecated the practice of introducing an artificial break in employment so as to defeat a claim for regularisation or permanency. Nevertheless, the petitioner has accepted the appointment orders with eyes wide open and has put in four years of service as a daily-wager with the respondent.

7. The evidence recorded before the Labour Court did not prove employment of juniors vis-a-vis the termination of the petitioner who claimed to be senior to them. The Industrial Court has, therefore, scrutinised the judgment of the Labour Court, in the light of the evidence adduced before the said Court and has concluded that the petitioner has not been able to support his contentions in the complaint.

8. It is not in dispute that the petitioner is now out of employment practically for twenty five years after having put in about four years in service. The Apex Court (three judges Bench) in the matter of **Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.**, reported at AIR 1994 Supreme Court 1638 has held that the workers working on

temporary basis or with a temporary assignment cannot be attributed the status of confirmed employees when posts are not sanctioned. In the instant case, no evidence has been brought on record by the petitioner to establish that there were vacancies available or that the petitioner could be recruited as a driver without compliance of the recruitment procedure and that junior employees were retained in employment.

9. It is also evident from the record that the petitioner was offered retrenchment compensation and one months wages in lieu of notice period. The same is seen from the termination order on record.

10. Nevertheless, I do not find that any purpose would be served by remitting the matter to the Labour Court for fresh adjudication in the light of the fact that the petitioner had put in only four years of employment as a daily-wager on a temporary basis and is out of employment for the past twenty five years.

11. Though the Labour Court has concluded that the petitioner has not completed 240 days in continuous and uninterrupted service of the respondents, the appointment orders placed on record indicate that he was engaged purely on a temporary basis

and single day breaks in service were introduced as an artificial break in his employment for about four years. It is only by taking these aspects into account that I find that the petitioner could be granted some compensation.

12. In my view, therefore, the judgment of the Apex Court in the case of **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota Vs. Mohan Lal**, reported at 2013 LLR 1009, would squarely apply to this case.

13. In the light of the above, the petition is partly allowed. The respondents are directed to pay an amount of Rs. 75,000/- (Rs. Seventy five thousand only) as compensation. The said amount shall be paid by the respondents- Zilla Parishad to the petitioner within a period of four months from today on the address which shall be submitted by the petitioner to the respondents- Zilla Parishad through an application.

14. Rule is, therefore, made party absolute in the above terms.

(**RAVINDRA V. GHUGE, J.**)