

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.973 OF 1995

The State of Maharashtra
Through the Executive Engineer,
P.W.D.(North), Jalgaon,
(Now the work is transferred
to Executive Engineer,
National Highway Division No.11,
Dhule).

..Petitioner

Versus

1.Shri Santosh Gorakh Patil,
At and post Mhasave, Tq. Parola,
District Jalgaon.

2. The Ld. Presiding Officer,
Labour Court, Jalgaon.

..Respondents

...
Advocates appearing for :
Petitioner : Shri K.M.Suryawanshi, AGP
Respondent 1 : Shri S.K.Shelke
Respondent 2 : Deleted
...

CORAM : RAVINDRA V.GHUGE, J.
Dated : 20.2.2015

ORAL JUDGMENT :-

1. This petition was admitted on 3.3.1995. By order dated 23.2.2000, passed below Civil Application No. 949 of 1999, the petitioner was directed to pay the last drawn wages to the respondent / employee (as on date of his termination on 8.6.1987), under Section 17B of the Industrial Disputes Act, 1947 ("ID Act").

2. The petitioner contends that the respondent was engaged as a Daily-

Wager for performing duties as a Watchman from 22.1.1986 till 7.6.1987. The respondent claims that he was appointed as a Watchman on 1.11.1984 and terminated on 8.7.1987. He preferred Reference (IDA) No.19 of 1988 for challenging his termination which was allowed by the impugned Award dated 5.4.1994.

3. Having heard the learned Advocates, I have gone through the petition paper book with their assistance. Apparently, there was no documentary evidence on record to establish that the respondent had worked as a Watchman with the petitioner from 1.11.1984 to 7.6.1987. One month's notice of termination was issued to the respondent and retrenchment compensation was paid, which is proved before the Labour Court.

4. The respondent, in his cross-examination before the Labour Court, had stated that he was a Watchman at Mhasave Government Rest House and given work of minor repairing as a Road Biggari. He claims to have been born on 24.4.1969.

5. I find from the impugned judgment that the Labour Court has held that the respondent employee had worked continuously as defined under Section 25B of the ID Act.

6. There is no evidence on record, much less any submissions, on the part of the respondent / employee that junior workmen have been retained in employment and the respondent has been terminated in contravention of

Section 25G of the ID Act. Despite these facts, the Labour Court has concluded that the employee had proved continuous employment under Section 25B and had proved violation of Section 25G of the ID Act, on the part of the petitioner. The fact that the petitioner proved due compliance of Section 25F and that there was no iota of evidence before the Labour Court that juniors have been continued in employment, have been disregarded by the Labour Court which granted reinstatement with continuity of service to the respondent / employee. He was deprived of backwages.

7. The respondent has been granted the benefit of Section 17B of the ID Act by virtue of the order passed by this Court, dated 23.2.2000 as is referred to hereinabove.

8. The respondent has placed on record a copy of his School Leaving Certificate, dated 12.12.1982, to indicate his date of birth as 24.4.1969. As such, if the contention of the respondent is accepted, though there is no evidence on record, that he joined employment with the petitioner as a Watchman on 1.11.1984, it will have to be construed that the respondent was employed at the age of 15 years.

9. I, however, do not desire to go into this aspect since the respondent has been out of employment for the past 28 years. He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Assistant Engineer, Rajasthan

State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009] and in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], I am convinced that the impugned judgment and award deserves to be partly set aside.

10. Paragraph No.20 of the judgment in the case of Mohanlal (supra) reads as under:-

“ We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh : (2013) 5 SCC 136 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

11. Paragraph No.29 of the judgment in the case of Gitam Singh (supra) reads as under:-

“ In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to

exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum.”

12. It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos.4 and 5 in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558] as under:-

“4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

13. The Honourable Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], has held in paragraph No.14, as under:-

“ It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

14. Taking into account that the respondent was granted last drawn wages from the year 2000, under orders of this Court and keeping in view the fact that he is out of employment for last 28 years, an amount of Rs.50,000/- as compensation, in lieu of reinstatement and continuity of service, would be an appropriate relief.

15. As such, this petition is partly allowed. The impugned judgment and award, dated 5.4.1994, is modified. The petitioner is directed to pay compensation of Rs.50,000/- (Rs. Fifty Thousand only/-) in lieu of reinstatement and continuity of service to the respondent, besides the wages paid to the respondent under Section 17B of the ID Act.

16. Rule is accordingly, made partly absolute.

(RAVINDRA V.GHUGE, J.)

...

akl/d