

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 994 OF 1995

Subhash Rama Shelke
(Muktukar), R/o Mohadi,
Tq. Jamner, Dist. Jalgaon.

..Petitioner

Versus

1. Executive Engineer,
Public Works Division,
Jalgaon.

2. Sub-Divisional Engineer,
EGS Sub-Division, Jamner,
Tq. Jamner, Dist. Jalgaon.

3. The State of Maharashtra.

..Respondents

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Advocate for Petitioner : Shri S.V.Suryawanshi
h/f Shri P.B.Shirsath
AGP for Respondent 3 : Shri S.N.Kendre
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 03, 2015
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ORAL JUDGMENT :-

1. This petition was admitted on 6.3.1995. No interim relief was granted to the petitioner.

2. The petitioner had preferred Complaint (ULP) No. 109 of 1990 before the Labour Court at Jalgaon. Learned Advocate for the petitioner submits that he was working from 30.8.1984 till 31.8.1990. Though the petitioner had no evidence to prove his continuous service, he had produced two

certificates dated 19.11.1990 at Exhibit U/14 and 1.12.1986 at Exhibit U/15. Based on the same, the Labour Court held in favour of the petitioner and by judgment and order dated 30.8.1993, the Complaint was allowed and the respondents were directed to reinstate the petitioner with continuity of service and full backwages.

3. He submits that the respondents preferred Revision (ULP) No.339 of 1993 before the Industrial Court at Nasik. By the impugned judgment dated 27.1.1995, the Revision Petition was allowed, the judgment of the Labour Court was set aside and the Complaint was dismissed.

4. He further submits that the Industrial Court has exercised jurisdiction not vested in it by law and has dealt with the Revision Petition not within its revisional jurisdiction under Section 44, but as if it was an appeal and the Industrial Court was exercising appellate jurisdiction.

5. He submits that the Revision was allowed primarily on the ground that the petitioner was working on Employment Guarantee Scheme ("EGS") and the provisions of the Labour Laws cannot be made applicable to employees working on EGS. He, therefore, submits that the Industrial Court was not called upon to deal with the said issue. Similarly, the Industrial Court has not dealt with the two certificates which indicate that the petitioner was working continuously with the respondents. He, therefore, prays for setting aside the impugned judgment and restoration of the

judgment of the Labour Court.

6. The learned AGP appearing on behalf of the respondents has strenuously supported the impugned judgment. He submits that the EGS was aimed at reducing unemployment and starvation amongst the unemployed persons. It was a benevolent scheme, which was introduced to generate some employment to the unemployed persons. Intention behind the Scheme was to some how make some work available and give some employment on daily wages. He relies upon the judgment delivered by this Court in the matter of Chief Conservator of Forests Vs. Ashique Jabbar Sheikh [2012 I CLR 878], wherein, it is held that the claim under Labour Legislation in relation to EGS is not maintainable. He, therefore, submits that this petition deserves to be dismissed.

7. I have considered the submissions of the learned Advocates as recorded above. I have scrutinized the judgment of the Labour Court in the light of the submissions of the petitioner.

8. Exhibits U/14 and U/15 are two certificates issued by the Sub-Divisional Engineer, EGS. In one certificate, it is stated that the petitioner was working intermittently and used to be terminated intermittently during the period 30.8.1984 to 31.8.1990, when he used to be intermittently engaged on EGS. The other certificate indicates that the petitioner was working on EGS from 30.8.1984 to 5.5.1985 and 20.10.1985 to 14.6.1986.

Besides these two documents, there was nothing before the Labour Court to conclude that the petitioner had completed 240 days in the 12 calendar months preceding the date of reference.

9. The conclusions of the Labour Court in paragraph No.14 and 15 indicate that it has merely drawn adverse inference against the respondent by relying on the two certificates, which, in my view, have been wrongly read into by the Labour Court. Neither Exhibit U/14 nor U/15 indicates that the petitioner was working continuously even in the 12 calendar months preceding 31.8.1990, much less, in between 30.8.1984 to 1.9.1990. Though the Industrial Court has not considered this fact, I do find that there was no evidence before the Labour Court to conclude that the petitioner had worked continuously and in the uninterrupted service of the respondent, so as to be covered under Section 25B of the Industrial Disputes Act, 1947.

10. The Industrial Court has considered that the claim has been made by the petitioner despite he working on EGS. No evidence was brought before the Labour Court to indicate that the petitioner was working under the respondent / Department as a Mustering Assistant so as to handle the EGS. Similarly, as concluded above, there was no evidence of continuous service having been put in by the petitioner in the service of the respondent.

11. In the light of the above, I do not find that the impugned judgment could be termed as perverse or erroneous. This petition, being devoid of

merits, is therefore, dismissed.

12. Rule stands discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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