

kps

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

WRIT PETITION NO. 2785 OF 1994

Syed Jainul Abeddin s/o
Syed Hussain,
Aged 34 years, Occ : Nil,
R/o Milan Colony,
Near Balepeer Police Colony,
Charhata Road, Beed.

...PETITIONER

-VERSUS-

- 1 Executive Engineer,
Paithan, Right Bank Canal,
Division No.1, Beed.
- 2 Sub-Divisional Engineer (Officer),
Jaikwadi Project Stage No.II,
Sub Division No.7, Mali Pargaon,
Post Kitti Adgaon, Taluka Majalgaon,
District Beed. (Mali Pargaon Camp).
- 3 State of Maharashtra.
(Copy of the petition for the
respondents to be served on
Government Pleader, High Court,
Bench at Aurangabad.)

...RESPONDENTS

...

Advocate for Petitioner : Smt.A.N.Ansari.

AGP for Respondent No.3 : Shri S.G.Sangle.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st October, 2015

Oral Judgment:

1 This petition was admitted by order dated 09.11.1994. No interim relief was granted.

2 The Petitioner submits that he has been working with the Respondent from 24.08.1981 till the date of termination on 05.05.1984. The chart indicating the number of days worked in between 23.05.1983 till 05.05.1984 is set out in the memo of the petition with the contention that the total number of days worked is 243. It is further submitted that Section 25F of the Industrial Disputes Act, 1947 was not complied with while terminating the services of the Petitioner on 05.05.1984.

3 The Petitioner has further submitted that after his termination, he preferred Complaint (ULP) No.81/1984 before the Labour Court at Aurangabad. By the impugned judgment and order 26.09.1989, the complaint was dismissed. The Petitioner, therefore, preferred Revision (ULP) No.89/1989 before the Industrial Court at Aurangabad. The revision petition was dismissed vide judgment dated 22.03.1994 as the Industrial Court did not find any perversity in the judgment of the Labour Court.

4 The Petitioner has stated in the petition that despite having

completed 240 days in the continuous and uninterrupted service of the Respondent from 23.05.1983 till 05.05.1984, the Labour Court as well as the Industrial Court have erroneously concluded that the Petitioner has not completed 240 days in continuous service. It is further stated that neither one month notice, nor the compensation in lieu of notice period was paid to the Petitioner as required under Section 25F of the Industrial Disputes Act, 1947.

5 The Petitioner has laid much stress on the chart mentioned in the memo of the petition to suggest that he was working continuously and has completed 240 days in a calender year preceding the date of reference. The notice for production of documents was given to the Respondent. There was no response and the documents were not produced.

6 It is further stated in the petition that the Labour Court as well as the Industrial Court failed to appreciate the contentions and averments of the Petitioner and merely because the Petitioner had not stated in the complaint that he was in continuous and uninterrupted service for a period of 240 days, the complaint has been dismissed. The Labour Court has adopted a pedantic approach. The impugned judgment of the Labour Court is perverse and so is the impugned judgment of the

Industrial Court. It is, therefore, prayed that the impugned judgments be quashed and set aside and the Petitioner be granted reinstatement with continuity and full back-wages.

7 This petition is dismissed as against Respondent No.1/ Executive Engineer, Paithan Right Bank Canal, Division No.1, Beed, by the order of the Registrar dated 01.09.2003. Respondent Nos.2 and 3 are served. No appearance has been entered on behalf of Respondent No.2. The learned AGP appears on behalf of Respondent No.3/ State of Maharashtra.

8 The learned AGP submits that this is an open and shut case. No evidence was brought before the Labour Court to indicate that the Petitioner had completed 240 days in continuous and uninterrupted service of the Respondent in 12 calendar months immediately preceding the date of reference, which is the date of termination 05.05.1984.

9 The learned AGP further submits that there was no pleading in the complaint to the extent that the Petitioner had completed 240 days in the light of Section 25B of the Industrial Disputes Act, 1947. It is merely stated that the Respondent did not comply with Section 25F and therefore, the impugned termination is bad in law.

10 The learned AGP points out that after 1982, the Petitioner was never engaged. It was only in November, 1983 that he was offered work on the construction of a colony at Beed and after the said project was over, he was terminated by the order dated 05.05.1984 which was placed before the Labour Court.

11 He further submits that the Labour Court has arrived at a finding of facts. The Industrial Court has dismissed the revision petition of the Petitioner. The concurrent findings cannot be upset only because another view could be possible. He, therefore, prays for dismissal of the petition.

12 Having considered the submissions as recorded above, I have gone through the impugned judgments as well as the examination-in-chief and cross-examination of the Petitioner and the witnesses for the Respondent.

13 It is not controverted that besides contending that Section 25F was not complied with by the Respondent, the Petitioner has nowhere pleaded in the complaint that he had worked for 240 days in continuous and uninterrupted service of the Respondent in a period of 12

calender months immediately preceding the date of reference. It is undisputed that the Petitioner was terminated on 05.05.1984.

14 It is trite law that onus and burden of proving continuous employment as defined under Section 25B of the Industrial Disputes Act, 1947 lies on the Employee. I do not find from the record that the said burden has been discharged.

15 The Labour Court has noted that the order of termination dated 05.05.1984 at Exhibit U/4 has been issued by the Respondent. It is also noted that there was no evidence on record to indicate that the Petitioner was working continuously with the Respondent from 23.05.1983 till 05.05.1984. The documents below Exhibit C/6 were brought on record which proved that the services of the Petitioner were infact terminated in 1982.

16 The Respondent examined it's witness, namely, Mr.Kishor Narayan Pashime at Exhibit C/3. He deposed stating that after the Petitioner was terminated from 06.12.1982 by notice dated 06.11.1982, he was thereafter, taken back in employment on the project of construction of the colony at Beed from 22.08.1983. After the work was over, he was issued with notice dated 05.05.1984 and was informed that

as the construction of quarters at Beed colony was over, the work had concluded and he was, therefore, disengaged. The said witness has further stated that the Petitioner has completed only 169 days in between 22.08.1983 to 05.05.1984.

17 The Petitioner was confronted with Exhibit U/1 which is the notice for termination dated 05.05.1984. The same has been admitted. It is a bit surprising that the Petitioner contends that he did not receive the notice dated 05.05.1984 from the Respondent, when in fact it was the Petitioner himself who produced the said termination letter along with his complaint before the Labour Court.

18 Considering the above, I do not find that the Petitioner had completed 240 days in continuous employment in 12 calendar months preceding the date of his termination dated 05.05.1984. It is not in dispute that for the last 31 years and 05 months, the Petitioner is not in employment.

19 I do not find that the Labour Court or the Industrial Court has committed any error in dismissing the complaint and the revision petition, respectively. The impugned judgments cannot be termed as being perverse or erroneous.

20 The Petitioner being devoid of merit, is dismissed. Rule is
discharged.

(RAVINDRA V. GHUGE, J.)