

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.682 OF 1995

The State of Maharashtra,
Through Executive Engineer,
Public Works Division,
Ahmednagar

PETITIONER

VERSUS

1. Jijaba Bhaginath Ghule,
At Shekte, Post Bhate, Takle,
Tal.Pathardi, Dist.Ahmednagar,

2. The learned Judge,
Ind Labour Court,
Ahmednagar

RESPONDENTS

Mr.K.N.Lokhande, AGP for the petitioner.
Mr.A.S.Shelke h/f Mr.S.K.Shelke, Advocate for respondent No.1.
Respondent No.2 is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/10/2015

ORAL JUDGMENT :

1. Leave to delete respondent No.2 is granted. Deletion be carried out forthwith.

2. This petition was admitted on 08/02/1995. No interim relief was granted.

3. The petitioner is aggrieved by the judgment and award dated 30/04/1994 delivered by the Labour Court in Ref.(IDA) No.17/1988, by which the reference was allowed. The respondent was granted reinstatement with continuity of service and full back wages w.e.f. 01/09/1986.

4. The petitioner submits that the respondent claimed to have worked as a “daily wager” from 1983 till 31/08/1986. From 01/09/1986, he was disengaged.

5. Learned AGP fairly submits that though the petitioner caused an appearance in the reference case, there was no participation and as such the petitioner could not espouse its cause before the Labour Court. Nevertheless, the statement of the respondent went unchallenged and despite there being no evidence on record to establish the factum of his service tenure, the Labour Court has granted reinstatement for having worked from 22/11/1984 to 01/09/1986. He, therefore, submits that the impugned award is unsustainable.

6. Mr.Shelke, learned Advocate for the sole respondent has

supported the impugned award. He submits that he could establish before the Labour Court that he had worked from 22/11/1984 to 01/09/1986, which is a period of about 20 months. The petitioner has the custody of the record to indicate that he was working as a “daily wager” on nominal muster roll. Since the petitioner did not participate and gave no assistance to the Labour Court, the reference case could not have been negated despite the non co-operation of the petitioner.

7. He points out that the documents in the custody of the petitioner were demanded and despite orders of the Court, the petitioner produce only the table of days worked and wages earned, but did not produce the attendance/wage register and the seniority list of daily rated workers. Based on the same, the claim of the respondent was established and the Labour Court relied upon the table of days worked to conclude that the respondent had worked for about 240 days. He, therefore, prays that this petition be dismissed.

8. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

9. The respondent had claimed that he was working from 1983.

The age of the respondent is not known to either of the sides. The fact remains that 33 years have passed after the purported engagement of the respondent.

10. The learned AGP has placed on record a communication dated 29/10/2015 addressed by the Executive Engineer to the learned AGP. Same is marked as Exhibit "X" for identification.

11. He, therefore submits that the respondent has been continued in employment and is presently working. Mr.Shelke, therefore, submits that his services may be continued since the respondent has settled in employment. He, therefore, prays that no interference be caused in the impugned award dated 30/04/1994.

12. The Labour Court has virtually delivered an exparte-award. Without any evidence to the extent of unemployment and 'not being in gainful employment' on the part of the respondent, full back wages have been granted.

13. I, therefore,do not find that the conclusion of the Labour Court of granting full back wages could be sustained. As the respondent continues to be in employment, any interference in the order of

reinstatement granted by the Labour Court would upset the settled employment of the respondent.

14. In the light of the above, and in the light of Exhibit X, this petition is partly allowed. The impugned award dated 30/04/1994 is modified only to the extent of setting aside the directions for payment of full back wages. Rest of the directions of the Labour Court are sustained.

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)