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

WRIT PETITION NO. 4167 OF 1994
WITH
CIVIL APPLICATION NOS.7790/2004 & 7791/2004
IN WP/4167/1994

WITH
WRIT PETITION NO.4192 OF 1994

The State of Maharashtra.
Through Executive Engineer,
Jaikwadi Canal Circle Division No.11,
Karegaon Naka, Parbhani.

...PETITIONER in both petitions

-VERSUS-

1 Prabhakar Bhujangrao Jogdand,
Age : 39 years, Occ : Nil,
R/o Italapur, Post Pingli,
Tq. & Dist.Parbhani.

...Respondent No.1 in WP/4167/94

1 Shrirang Kisanrao Gaikwad,
Age : 38 years, Occ : Service,
At.Limla, Post Pingli,
Tq. & Dist.Parbhani.

...Respondent No.1 in WP/4192/94

2 The Presiding Officer,
Industrial Court, Jalna.

...Respondent No.2 in both petitions.

...RESPONDENTS

...

AGP for Petitioner : Shri S.G.Sangle.

Advocate for Respondent No.1 : Shri M.B.Bharaswadkar.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 10th September, 2015**

Oral Judgment:

1 These two Writ Petitions were admitted by the orders of this Court dated 05.12.1994 and 31.01.1995, respectively. Interim relief was refused.

2 In these two petitions, the Petitioner is aggrieved by the impugned judgment and order dated 24.01.1991 delivered by the Labour Court in Complaint (ULP) Nos.19/1986 and 18/1986, respectively, and the judgment of the Industrial Court dated 26.04.1994 in Revision (ULP) Nos.63/1994 and 62/1994, respectively.

3 Both the Respondents/ Employees claimed to have been working from 1977 onwards as Mustering Assistants. They claimed to have completed five years in continuous service. The Kalelkar Award was said to have been made applicable to them. They were not brought on “Converted Regular Temporary Establishment” (CRTE) till their termination from service.

4 The Petitioner/ Establishment had opposed the complaints filed by the Respondents/ Employees on the ground that both the Respondents/ Employees were working on Employment Guarantee Scheme (EGS). The earlier seniority list dated 10.07.1985 was corrected as the Petitioner noticed certain errors and the revised seniority list was

published on 14.01.1986 showing the correct dates of appointment of the Respondents as 01.12.1980. The Petitioner denied that junior employees like Mr.Maladkar and Mr.Syed Alam were retained in service while terminating the Respondents.

5 The grievance of the Petitioner is that the Labour Court has erroneously allowed the complaint on the ground that the Respondents had completed 240 days in a continuous employment. They were in fact working on Employment Guarantee Scheme. Since the work was not available, they were terminated w.e.f. 21.02.1986.

6 Shri Sangle, learned AGP submits that merely because the Respondents may have completed 240 days, the Labour Court was not justified in granting reinstatement only on account of non compliance of Section 25F of the Industrial Disputes Act, 1947. He submits that the Industrial Court failed to see the error committed by the Labour Court and has mechanically dismissed both the revision petitions.

7 Shri Bharaswadkar, learned Advocate for the Respondents, submits that both the Respondents have been reinstated in employment after this Court admitted these petitions and refused interim relief. By virtue of the reinstatement, they continued in employment for the last

about 20 years. Recently, they have superannuated on attaining the age of retirement. It is further stated that presently they are getting their pensionary benefits. However, pensionary benefits need to be extended w.e.f. 21.02.1986 as the Labour Court as well as the Industrial Court have granted reinstatement with continuity from the said date of termination.

8 Shri Sangle submits that the Respondents did not lead evidence with regard to not being in gainful employment. No attempt to search for an alternate employment was made and yet the Labour Court has granted back-wages considering the fact that the retrenchment was held to be illegal. He, therefore, submits that the conclusions drawn by the Labour Court as well as the Industrial Court are erroneous. Shri Bharaswadkar has refuted these contentions.

9 I have considered the submissions of the learned Advocates as have been recorded herein above.

10 Both the Respondents had established before the Labour Court through oral and documentary evidence that they had worked continuously in the service of the Petitioner. It was also proved that Section 25F of the Industrial Disputes Act, 1947 was not complied with. This finding on facts by the Labour Court was not disturbed by the

Industrial Court which has also considered the record available.

11 I do not find that the Petitioner has brought forth any such evidence or a ground by which these findings on facts could be termed as being perverse requiring interference by this Court. Having considered the impugned judgments in the light of the record available, I do not find that the conclusion of the Labour Court and the Industrial Court to the extent of holding that the retrenchment is illegal, needs any interference.

12 The Apex Court, in the matter of *Mackinnon Mackenzie and Company Limited v/s Mackinnon Employees Union*, **(2015) 4 SCC 544** and *Ajaypal Singh v/s Haryana Warehousing Corporation*, **2015(6) SCC 321**, has held that non compliance of Section 25F of the Industrial Disputes Act, 1947 would result in the retrenchment being illegal and in such circumstances, the relief of reinstatement with continuity needs to be granted.

13 Shri Sangle, learned AGP, has strenuously canvassed that despite there was no evidence on record before the Labour Court by which it could be said that the Respondents made any effort to search for an alternate employment, failed in securing any such employment and therefore, continued to be unemployed, the Labour Court has

mechanically granted the back-wages.

14 Though Shri Bharaswadkar opposes these contentions, he is unable to point out any specific reason adduced by the Labour Court in granting the back-wages.

15 I find from the judgment of the Labour Court that besides concluding in one sentence which is *“hence, the complainants are entitled for back-wages except for the period during which they were in service.”*, there has been no discussion as to why the Labour Court is convinced that the Respondents deserve to be granted back-wages. I also do not find from the evidence before the Labour Court that the Respondents could be said to have canvassed the said issue as noted above.

16 In these circumstances, I find that the conclusions of the Labour Court in granting back-wages which conclusions have been upheld by the Industrial Court, deserve to be interfered with.

17 In the light of the above, both these Writ Petitions are partly allowed. The conclusion of the Labour Court only to the extent of granting back-wages is set aside. Rest of the judgment and conclusions of the Labour and Industrial Court are sustained. However, in the event the

Respondents/ Employees have already been paid the back-wages or any portion thereof, the Petitioner shall not seek recovery of the same in any manner.

18 Since the Respondents have superannuated and are being given their pensionary benefits, the Petitioners shall ensure that the pensionary benefits shall be calculated after considering the fact that the Respondents have been granted continuity in service w.e.f. 21.02.1986 in the case of both these Respondents.

19 In the event, the Respondents have any grievance about their pensionary benefits, they are at liberty to make a proper representation to the Petitioner in the light of this judgment and the Petitioner shall accordingly, consider the said representation and pass necessary orders as observed herein above.

20 Rule is, therefore, made partly absolute in the aforesaid terms.

21 All the pending Civil Applications do not survive and the same are disposed of.

(RAVINDRA V. GHUGE, J.)