

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4166 OF 1994

The State of Maharashtra
through the Executive Engineer,
PWD Division Nilanga,
District: Latur

Petitioner

Versus

1 Shrikrishna Nivruti Lohar
R/o Kollegali, Near Chougule
Saw Mill, A/P Nilanga
Dist. Latur

2 The Presiding Officer,
Industrial Court, Solapur (deleted as per the leave of
Hon'ble Court) Respondents

Mr.K.N. Lokhande, AGP for the petitioner
Mr. P.V. Barde h/f Mr. K.J. Suryawanshi, advocate for Respondent

CORAM : **RAVINDRA V. GHUGE, J**

Date : 15th OCTOBER, 2015.

ORAL JUDGMENT

1 Leave to delete Respondent No.2. Deletion be carried out forth with.

2 This petition was admitted by this Court on 15.3.1996. It is undisputed that, no interim relief was granted by this Court in favour of the petitioner.

3 The petitioner is aggrieved by the Judgment & order dated 14.2.1994 delivered by the Industrial Court, Solapur in Complaint ULP. No.75/96 filed by the respondent. Relief granted by the Industrial Court vide the said Judgment is as under:-

“ I) The Complaint is allowed.

II) It is hereby declared that the Respondent has engaged into the unfair labour practices under items 3, 6 and 9 of Schedule IV of the PULP Act., and they are directed to cease and desist from adopting such unfair labour practices.

III) The respondent is directed to confer upon the Complainant the status and privileges of permanent employee to the post of 'Junior-clerk from the date of completion of 240 days in a period of 12 months from the date of his appointment viz. 7.5.1979 and accordingly pay the difference in wages and other benefits, if any, to the complainant.

IV) No order as to costs. “

4 The petitioner submits that, the respondent was appointed as a mustering assistant on 7.5.1979. He was transferred from Nilanga to Kasar Shirsi road work site on 18.5.1985. The respondent preferred Complaint ULP. No.75/86, seeking regularization and benefits, incidental thereto, on the post of Junior Clerk, on the ground that, the respondent was working as a Junior clerk, despite being appointed as a mustering assistant. By the impugned Judgment, the complaint was allowed.

5 The learned AGP has strenuously criticized the impugned Judgment of the Industrial Court. Mr. P.V. Barde has supported the impugned Judgment. With their assistance, I have gone through the petition paper book.

6 As the respondent was working as a Junior Clerk from 7.5.1979 onwards, he was granted the benefits, as have been reproduced herein above. The said Judgment is in force from 14.2.1994 till this date and has not been stayed by this Court. Considering the reasons assigned by the Industrial Court, on the basis of oral and documentary evidence, I do not find that the impugned Judgment can be termed as being perverse or erroneous.

7 Mr Barde submits that, the respondent has recently superannuated in 2015. He was drawing Rs.300/- per month, as on 22.5.1985, which emerges from the record. Mr Barde, therefore, submits that, the respondent is entitled for the back wages for the entire period, having not been allotted work by the respondent and especially from the date of Judgment of the Industrial Court. He made every attempt to join duties, but on account of the rigid attitude of the petitioner, he was not allotted duties and was kept idle.

8 For the above purpose, Mr. Barde points out the order dated 19.7.2005 delivered by this Court in CA No.8114/2005. He submits that, the respondent had preferred an Application (IDA) under section 33-C(2) and had demanded wages payable to a junior clerk, since he was performing the duties of a Junior Clerk all through-out and yet the petitioner was paying him the wages payable to a mustering assistant. The Labour Court had allowed the Application of the respondent. The petitioner had challenged the same in Writ Petition No.230/90.

9 He further submits that, by order dated 19.7.2005, this Court noted that, the salary of the petitioner is to be paid at par

with other Junior clerks. The Judgment of the Labour Court was not interfered with. Subsequently, the Writ Petition filed by the petitioner was dismissed.

10 Mr. Barde, thereafter points out that, the petitioner had appeared before the Lok Ayukta, on a complaint filed by the respondent. It was averred by the respondent that, the petitioner is not allotting him any duty and is keeping him idle. He points out from a communication dated 28.3.2008 issued by the petitioner to the Assistant Registrar of the Office of the Lok Ayukta, wherein, it was informed to the Lok Ayukta that, this Court has stayed the Judgment of the Industrial Court dated 14.2.1994 and hence the respondent employee need not be reinstated in service. He submits that, this Court has never stayed the Judgment of the Industrial Court and as a consequence of such misrepresentation, the respondent was kept out of employment.

11 Per contra, learned AGP submits that, the respondent himself was not reporting for duties. By communication dated 11.6.1985 the Assistant Engineer of the petitioner department informed the Junior Engineer that, the respondent had left his place of residence and was not available. The landlord informed that, the respondent is not residing at the said place and the

landlord is unaware as regards his whereabouts. A similar communication dated 19.6.1985 also indicates that, the respondent was not available. By yet another communication dated 4.7.1985, the Junior Engineer informed the Assistant Executive Engineer that, the respondent is unauthorizedly absent. Mr Barde vehemently refutes this contention.

12 It is, therefore, apparent from the above, that whether respondent offered himself for work, is disputed. It is also disputed, as to whether the petitioner declined to give him work. The representations made by the respondent and the communication of the petitioner, are contrary to each other. In a sense, this appears to be a disputed issue, which cannot be gone into in the writ jurisdiction of this Court.

13 Nevertheless, it cannot be overlooked that, the respondent had worked continuously for six years. He has been granted benefits of scale of Junior clerk and incidental benefits, by the Industrial Court, which Judgment I find to be proper. However, the fact remains that, the respondent is not on duty and has not been paid his wages for last 30 years.

14 In the peculiar facts of the case, as recorded above, I am of

the view that, it would be pragmatic and practical to follow the ratio laid down by the Apex Court in the following four Judgments:-

- 1 *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal* 2013 LLR 1009
- 2 *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh* (2013) 5 SCC 136
- 3 *BSNL vs Man Singh* (2012) 1 SCC 558
- 4 *Jagbir Singh vs. Haryana State Agriculture Marketing Board* (2009) 15 SCC 327.

15 The Apex Court in the above Judgments has held that, it would be proper to quantify compensation in such circumstances, in which, an employee has worked for short span and is out of employment for long duration.

16 Having considered the peculiar facts of this case, I direct the petitioner to pay compensation of Rs.2,50,000/- to the respondent, within a period of 12 weeks from today, failing which, it shall carry simple interest @ 3% per annum from the date of Judgment of the Industrial Court which is 14.2.1994.

17 The Respondent shall be deemed to be in continuous service from 7.5.1979 till the date of his superannuation. All his retiral

benefits, therefore, be calculated on the basis of this continuous service and which shall be made available to him as expeditiously as possible and preferably within 16 weeks from today.

18 Rule is made partly absolute in above terms.

19 All the pending Civil Applications do not survive and stand disposed of.

(RAVINDRA V. GHUGE, J)

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