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

WRIT PETITION NO. 268 OF 2013

THE STATE OF MAHARASHTRA,

THROUGH :

Executive Engineer,

P.W.D.Beed..

..PETITIONER

-VERSUS-

AMBADAS DHONDIBA SHELAR,

C/o Trade Union Centre,

Bashirgunj, Beed.

..RESPONDENT

...

Mrs.V.A.Shinde, AGP, for the Petitioner.

Mr.L.S.Shaikh, Advocate for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th June, 2015

Oral Judgment:

1 Rule.

2 Rule made returnable forthwith and heard finally by consent
of the parties.

3 I have heard the learned AGP on behalf of the Petitioner and
Mr.L.S.Shaikh, learned Advocate appearing for the sole Respondent, for

quite sometime.

4 In the light of the order which I propose to pass, that I am not adverting to the entire contentions of both sides. I am referring only to those contentions which are relevant for the purpose of passing this order.

5 The Respondent/ Employee claimed to have joined duties as “Mail Coolie” with the Petitioner/ Department on 01.02.1990. It was claimed that he worked upto 21.06.1992 and was orally terminated. The Respondent has attained the age of superannuation.

6 At the instance of the Respondent, who had raised an industrial dispute under Section 2A of the Industrial Disputes Act, 1947, the appropriate authority referred the dispute to the Labour Court at Aurangabad. The said reference was registered as Reference (IDA) No.124/1993.

7 In response to the statement of claim filed by the Respondent, the Petitioner filed it's reply and denied all the contentions set out by the Respondent. It is not in dispute that the Respondent/ Employee led evidence which was un-controverted since the Petitioner did not cross-examine the Respondent. Similarly, the Petitioner filed an affidavit in lieu

of oral evidence. However, the affiant witness on behalf of the Petitioner did not remain present and did not subject himself to cross-examination at the hands of the Respondent/ Employee.

8 By the judgment and award dated 21.01.2004, the reference was allowed and the Respondent was granted reinstatement with continuity and back-wages w.e.f. 21.06.1992. The oral termination of the workman was set aside.

9 The Petitioner preferred Miscellaneous Application (IDA) No.5/2004 under Rule 26 of the Industrial Disputes (Bombay) Rules, 1957 seeking recalling/ vacation of the ex-parte award dated 21.01.2004 and seeking rehearing in the reference proceedings. By an order dated 28.09.2011, the Labour Court rejected the said application, which is impugned in this petition.

10 It is undisputed that the Petitioner had not participated in the reference proceedings before the Labour Court and had shown laxity in dealing with the said proceedings.

11 This Court by it's judgment dated 16.12.2013 in the matter of *Municipal Council, Sillod v/s Bhanudas Jaywanta Sonawane* reported in

2014 MCR 437, had in similar circumstances, remanded the reference proceedings to the Labour Court subject to ordering the Employer to deposit an amount of Rs.1 lac in the Labour Court and till the decision of the Labour Court, the Employer was directed to pay an amount of Rs.5,000/- per month to the Employee.

12 However, in the instant case, the Respondent/ Employee has worked for about 28 months. He has attained the age of superannuation. He has been unemployed for the past 23 years. As such, I am not inclined to remand the matter to the Labour Court for a fresh adjudication.

13 In the instant case, the Labour Court has concluded that the Respondent/ Employee has worked continuously for a period of about 28 months. However, the period of his unemployment is about 23 years. In this backdrop, it would be a futile exercise to consider the request of the Petitioner for remand and fresh adjudication of the reference proceedings. The Petitioner by it's own conduct has failed to participate in the reference proceedings before the Labour Court.

14 Nevertheless, it is in the backdrop of the employment of the Respondent for a short period of 28 months that I am inclined to follow the ratio laid down by the Apex Court in the cases which are as under:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];*
- (c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558; and*
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].*

15 In the similar circumstances this Court, in the matter of *State of Maharashtra v/s Santosh Gorakh Patil* reported at **2015 (3) Mh.L.J. (June) 922** (Writ Petition No.973/1995, Aurangabad Bench), by placing reliance upon the above referred four judgments of the Apex Court, has come to a conclusion that it would be appropriate to quantify the compensation to be paid to the Employee/ Workman rather than reopening the proceedings after a passage of 28 years and relegating the parties to the Labour Court for a fresh adjudication. In the backdrop of the Employee/ Workman having attained the age of superannuation, I am inclined to grant compensation to the Respondent.

16 In the light of the above, this Writ Petition is partly allowed. The judgment and award dated 21.04.2004 passed by the Labour Court is modified by granting compensation of Rs.75,000/- (Rupees Seventy Five

Thousand Only) to the Respondent/ Employee in lieu of reinstatement with continuity and back-wages. The said amount shall be paid by the Petitioner/ Employer to the Respondent/ Employee within a period of TWELVE WEEKS from today.

17 Rule is, accordingly, made partly absolute.

(RAVINDRA V. GHUGE, J.)