

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.504 OF 2014

1. The State of Maharashtra,
Through,
The Deputy Conservator of Forest
(Wild Life), Tilak Nagar, Aurangabad,
Dist. Aurangabad,
2. The Range Forest Officer (Wild Life),
Range Forest Office, Nagad,
Tq. Kannad, Dist. Aurangabad -- PETITIONERS

VERSUS

Smt.Kalabai Vitthal Ghuge,
Age-Major, Occu-Nil,
R/o Puranwadi, Post Umbarkhed,
Tq. Kannad, Dist.Aurangabad -- RESPONDENT

WITH

WRIT PETITION NO.505 OF 2014

1. The Deputy Conservator of Forest
(Wild Life), Tilak Nagar, Aurangabad,
Dist. Aurangabad,
2. The Range Forest Officer (Wild Life),
Gautala Autram Ghat Sanctuary,
Chalisgaon, Dist. Jalgaon. -- PETITIONERS

VERSUS

Himmat Prabhat Nagare,
Age-Major, Occu-Nil,
R/o At Post : Patna,
Tq. Chalisgaon, Dist. Jalgaon -- RESPONDENT

WITH

WRIT PETITION NO.555 OF 2014

1. The State of Maharashtra,
Through,
The Deputy Conservator of Forest
(Wild Life), Tilak Nagar, Aurangabad,
Dist. Aurangabad,
2. The Range Forest Officer (Wild Life),
Range Forest Office, Nagad,
Tq. Kannad, Dist. Aurangabad -- PETITIONERS

VERSUS

Shivram Baban Suryawanshi,
Age-Major, Occu-Nil,
R/oHaraswadi, Post : Saigavan,
Tq. Kannad, Dist.Aurangabad -- RESPONDENT

Mr.Umakant Patil, Advocate for the petitioners.
Mr.A.S.Shelke, Advocate for the respondents in all these petitions.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/08/2015

ORAL JUDGMENT :

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

2. Since the petitioners in all these petitions happen to be the Forest Department (Wild Life) established under the National Forest

Policy, 1988 and since all the three respondents in these cases are similarly and identically placed, I am dealing with all these 3 cases together.

3. The petitioners in all these 3 petitions are aggrieved by the judgment and award dated 25/10/2012, 22/02/2013 and 18/04/2013 in Ref.(IDA) Nos. 65/1999, 26/2001 and 63/2000, respectively.

4. In the first petition, by the impugned award, the respondent has been granted reinstatement without continuity and without back wages by setting aside his termination dated 17/12/1997. In the second petition, the respondent is granted reinstatement with continuity of service from 01/10/1998 and with 25% back wages. In the third case, the respondent is granted reinstatement with continuity of service from 31/03/1999, but without back wages.

5. It is undisputed that these 3 respondents are presently working as "Daily Wagers" with the petitioners having been reinstated on 18/01/2013, 01/06/2013 and 01/06/2013 respectively. It is, in this backdrop, that the respondents have prayed for continuation in service and have expressed their reluctance for accepting

compensation in lieu of reinstatement and continuous service.

6. Mr.Patil, learned Advocate for the petitioners has strenuously criticized the impugned judgments and awards. He submits that all these respondents were daily wagers. They were working in the forest. All of them were given work on “as and when available” basis. They alleged oral termination on the pretext that the work was not allotted to them. The petitioners are engaging daily wagers who are deployed by the District Collector of the said area.

7. Mr.Patil further submits that none of these respondents have been appointed through a proper selection procedure. There was no advertisement and as such there is no question of the respondents applying in pursuance to any advertisement. It cannot be said that there are permanent vacant posts available in Class-IV category. None of the respondents have completed 240 days in the continuous and uninterrupted service of the petitioners so as to be entitled for reinstatement on the ground that their termination amounts to an illegal retrenchment.

8. In so far as the second case is concerned, wherein the Labour Court has granted 25% back wages, Mr.Patil submits that there was

no evidence produced on record so as to establish that the respondent had attempted to acquire alternate employment and despite his best efforts he could not secure employment. There was no specific pleading and evidence to contend that the said respondent was not gainfully employed. He, therefore, prays that back wages, as are granted, amounts to an erroneous conclusion and hence the said direction also deserves to be set aside. He prays for quashing and setting aside of all the 3 impugned awards.

9. Mr.Shelke, learned Advocate on behalf of all the respondents has supported the impugned award. He has drawn my attention to the issues cast. He has indicated from the impugned awards that these workers were working continuously. The evidence on record adduced by both the sides would also indicate that they were looking after the plantations in the forest and were working on regular basis. The muster rolls produced on record from Exh. C-24 to C-32 indicates the names of the respondents. In the second case, the seniority list produced below Exh.U-17/3 also indicates the presence of the respondents. In the first and the third case, the seniority list is not produced despite it being the same department.

10. Mr.Shelke further submits that Rule 81 of the Industrial

Disputes (Bombay) Rules, 1957 mandate creation of the seniority list and Section 25-G of the I.D.Act, 1947 mandates compliance of the principle “last come - first go” before terminating the services, even of daily wagers. He points out that in all these three cases, the Labour Court has arrived at a conclusion that Section 25-G and Rule 81 has not been complied with. He, therefore, prays for dismissal of the petitions.

11. I have considered the submissions of the learned Advocates who have taken me through the relevant records before the Court. The issue was as regards completion of 240 days in continuous service with the petitioners. The second issue is as regards compliance of Section 25-G and Rule 81 prior to terminating the services of the respondents. Onus and burden of proving continuous service lay on the shoulders of the respondents/workmen.

12. After going through the evidence on record, I find that these 3 respondents have on the basis of the documents proved that they have worked for more than 240 days in a calendar year preceding the dates of their termination. Consistently before their termination, they had put in more than 240 days in employment. Each of them

has averred in the statement of claim that they had been working from 1992 onwards till their dates of oral termination.

13. In the light of the said evidence, the oral termination is apparently in violation of Section 25-F of the I.D.Act. So also, the seniority list as is pointed out in the second case below Exh.U-17/3 should have also been followed so as to ensure that the junior most daily wager went out first. Non-compliance of Section 25-G was also established before the Labour Court.

14. The Labour Court has adduced specific reasons with regard to refusing continuity of service and back wages in the first case and grant of continuity of service in the second and the third case. In the light of the above, I do not find that these cases are fit for causing an interference in the directions issued by the Labour Court granting reinstatement as daily wagers on the same position. I also do not find any reason to interfere with grant of continuity of service in the second and third case.

15. In the second case amongst these 3, the Labour Court has granted 25% back wages in favour of the respondent/employee. In paragraph No.24 of the impugned award, the Labour Court

concluded that the employee had consistently sought adjournment and did not diligently conduct his matter. Besides pleadings that he has no source of income, there was no evidence on record to indicate the efforts taken by the said workman for securing an alternate employment. Despite causing a delay in the matter, the Labour Court granted 25% back wages to the said employee.

16. In my view, the Labour Court has erred in granting the said back wages to the respondent in the second case. The impugned award dated 22/02/2013 is required to be interfered with only to the extent of setting aside the direction in clause 4.

17. It needs mention that though the seniority list was produced in the second case below Exh.U-17/3 the same was not produced in the first and the third case. A seniority list has its own importance. It not only settles the dispute about which daily wager is senior, more importantly it assists the employer to conveniently follow the seniority list while allotting work to the daily wager so as to eliminate the allegations of favoritism and nepotism.

18. The fact that the seniority list was on record in the second case before the Labour court, the petitioner / Department must have been

maintaining the said list. Despite the contention of Mr.Patil that such seniority list is not maintained, I find it imperative to direct the petitioners to maintain such a seniority list of all daily wagers so as to enable the petitioners to allot work on daily wages to the daily wagers on the basis of the seniority list.

19. In the light of the above, no interference is called for in the impugned judgments and awards dated 25/10/2012 and 18/04/2013 in Ref.(IDA)Nos.65/1999 and 63/2000 in the first and third petition. These two petitions are, therefore, dismissed. Rule is discharged.

20. In so far as the second petition is concerned, the direction in clause 4 granting 25% back wages to the said employee by award dated 22/02/2013 is quashed and set aside. Rest of the directions of the Labour Court are sustained. This petition is, therefore, partly allowed and Rule is made partly absolute in the said terms.

21. The petitioners shall allocate work to these 3 respondents as per the directions of the Labour Court and shall scrupulously maintain a seniority list of all daily wagers in their respective categories, if any. Such list shall be prepared as expeditiously as possible and preferably within a period of 10 (ten) weeks from today

provided there is no seniority list in any of its Department. Nevertheless, the seniority list below Exh.U-17/3 produced before the Labour Court shall be updated and work shall be allotted to the respondents according to the said seniority list.

(RAVINDRA V. GHUGE, J.)