

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4464 OF 1994

The State of Maharashtra
through the Executive Engineer
Ahmednagar Irrigation Division,
Ahmednagar, Aurangabad Road,
Ahmednagar

Petitioner

Versus

Sampat Laxman Deshmukh
Age: 32 years, occu: nil
A/p Jamkhed, Old Shirur Road
Tq. Jamkhed, Dist.Ahmednagar

Respondent

Mr.K.N.Lokhande AGP for the petitioner
Mr.P.R. Vikhe Patil Advocate for Respondent

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

Dated : 15th OCTOBER, 2015.

ORAL JUDGMENT

1 This petition was admitted on 30.1.1995. By order dated 3.11.1995, interim relief was granted to the petitioner.

2 The petitioner is aggrieved by the Judgment & Award dated 30.6.1994, delivered by the Labour Court, Ahmednagar in Reference IDA No.48/91, by which the Reference was answered in

the affirmative and the respondent was directed to be reinstated with continuity and full back wages w.e.f. 16.12.1986.

3 Learned AGP submits that, the respondent was working as a mustering assistant on the Employment Guarantee Scheme (EGS) from 18.9.1979 till 15.12.1986. He was terminated w.e.f. 16.12.1986. An industrial dispute was belatedly raised, after five years and it was referred to the Labour Court for adjudication. By the impugned Judgment & Award dated 30.6.1994, the reference was allowed.

4 He further submits that, this Court has admitted the matter on 30.1.1995. On 6.10.1995, respondent was reinstated in service and he is due for retirement after attaining the age of superannuation on 31.5.2016.

5 Learned AGP has strenuously criticized the impugned Award.

6 However, I find that, the respondent had established before the Labour court that, he was in continuous service and was terminated on 16.12.1986. His termination order at Exh.U-12 indicates that, he had worked till 15.12.1986. On the basis of oral and documentary evidence available, the Labour Court concluded that, he had worked for 240 days, in continuous employment, in

each calendar year, preceding the date of reference. It was also established that, the petitioner did not comply with section 25-F of the Industrial Disputes Act, 1947 (ID Act) and as such, the termination of the respondent was rendered unsustainable.

7 Considering the submissions of the learned AGP and upon scrutinizing the impugned Award, in the light of the record available, I do not find that, the said Award can be termed as perverse or erroneous to the extent of the direction of reinstatement with continuity of service.

8 Learned AGP further submits that, the Labour Court has granted full back wages. The fact that, the Industrial dispute was received after five years, was totally disregarded by the Labour Court. No reasons are assigned for granting back wages. No evidence was led by the respondent to indicate that, he was not in gainful employment, he had made bonafide attempts to seek employment and could not secure any.

9 Mr. Vikhe Patil, learned advocate appearing on behalf of the sole respondent, has vehemently supported the impugned Judgment & Award. He submits that, the moment an order of termination is held to be unlawful or unsustainable, the guilt of the employer is established. Merely because, the respondent did not

lead evidence on the point of gainful employment, does not mean that, he was in gainful employment. The employer cannot be rewarded by denying back wages.

10 He has tendered across the bar a compilation of documents (8 pages) and has supplied a copy to the learned AGP. The said compilation of documents is taken on record and marked as Exh.'X' for identification.

11 He further submits that, the document at page No.1 at Exh.'X' dated 6.10.1995 indicates that, the respondent was reinstated in service. He further points out from the document at page No.3 of Exh.'X' dated 6.12.2006, that, the respondent has passed a departmental examination and has been selected as a surveyor. He indicates the joining report and submits that, the respondent has already joined as a surveyor. He also indicates from the notice of retirement dated 12.8.2015, that the respondent is due to retire on 31.5.2016, after attaining the age of superannuation.

12 He further submits that, no interference is called for in this situation, when the respondent has settled in employment for the past 20 years, selected as a surveyor and is due to retire on 31.5.2016.

13 I have considered the submissions of the learned Advocates on the point of back wages granted by the Labour Court.

14 It cannot be ignored that, by the subsequent events, as recorded above, the respondent has grown in employment and would be retiring on 31.5.2016 as a surveyor.

15 Nevertheless, the issue of back wages cannot be overlooked. The Apex Court in a recent Judgment delivered in the case of *Gauri Shankar Versus State of Rajasthan* (2015 II CLR 497) has concluded that, 25% back wages can be granted, if it is noticed that, the employee has suffered great hardships and manifest inconvenience on account of his termination and litigation.

16 In the instant case, the respondent was terminated w.e.f. 16.12.1986 and has been litigating till this date. However, his rigors of litigation have been almost extinguished on account of his reinstatement on 6.10.1995. In this back-drop, I am inclined to follow the ratio laid down by the Apex Court.

17 As such this petition is partly allowed. The impugned Judgment & Award dated 30.6.1994 is modified, only to the extent of full back wages, granted by the Labour Court. The said direction is, therefore, set aside and replaced by a direction to the

petitioner to pay 25% back wages w.e.f. 16.12.1986 till the date of reinstatement, in the event, the same has still not been paid.

18 However, in the event the petitioners have complied with the directions of the Labour Court and have paid full back wages to the respondent, prior to this Judgment, the petitioner shall then not recover the said amount from the respondent.

19 Rule is made partly absolute in the above terms.

20 Pending Civil Applications do not survive and are therefore disposed of.

(RAVINDRA V. GHUGE, J)