

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 552 OF 1995
WITH CIVIL APPLICATION NO. 6198 OF 2002
AND CIVIL APPLICATION NO.7321 OF 2003

1.The State of Maharashtra
Through Executive Engineer,
Minor Irrigation Division,
Latur Tq. and Dist. Latur.

2. The Sub-Divisional Officer
Minor Irrigation Sub-Division
Nilanga, Dist. Latur.

..Petitioners

Versus

1. Dnyanoba Bhimrao Yadav,
Age 35 years, Occ. Nil,
R/o Borphal, Tq. Ausa,
District Latur.

2. The Ld. Judge,
Labour Court, Latur.

3. The Member,
Industrial Court, Solapur.

..Respondents

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Special Counsel for Petitioner : Shri P R Tandale
a/w Shri S.G.Sangle, AGP
Respondents 2 and 3 : Deleted.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 08, 2015
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ORAL JUDGMENT:-

1. Leave to delete respondents 2 and 3 is granted. Deletion be carried out forthwith.

2. This petition was admitted by order dated 2.2.1995.

3. The petitioners are aggrieved by the judgment and order dated 31.10.1992, delivered by the Labour Court in Complaint (ULP) NO.10 of 1989 and the judgment of the Industrial Court dated 24.6.1994 delivered in Revision (ULP) No.4 of 1993.

4. Despite court service, after admitting this matter, none appears for the respondent. The respondent had challenged his termination dated 30.4.1985 by filing Complaint (ULP) No.10 of 1989.

5. The petitioners submit that the Tahsildar appointed the respondent as a watchman on the Employment Guarantee Scheme (EGS), when the project for construction of Walwade Percolation Tank was undertaken. After the project was completed, the respondent was disengaged on 30.4.1985. This specific stand was taken in the Written Statement at Exhibit C/8 for opposing Complaint (ULP) NO.10 of 1989 filed by the respondent alleging illegal retrenchment.

6. It is further pointed out that the document at Exhibit C/16 indicated that the respondent was working on EGS from November 1982 till April 1985. The moment the project was over, the respondent was disengaged. The Tahsildar used to pay him daily wages under the EGS. It is, therefore, submitted that merely because the respondent had completed 240 days in employment, would not mean that a right was created in the respondent.

7. The petitioners have replied upon the judgment of this Court in the matter of State of Maharashtra Vs. Bhausaheb Nathu Falke [2002 (1) Mah. L.R. 74 (SC)], to support their contention that the employees who are offered work in the EGS Scheme, cannot claim reinstatement or regularization. He, therefore, prays for the quashing and setting aside of the impugned judgments. It is stated that the respondent is not in employment for the last 30 years.

8. I have considered the submissions of the learned Advocate for the petitioners. Due to the demise of the earlier Advocate of the respondent, notice was issued and the same was served upon the respondent on 4.6.2005. No appearance has been caused by him in this matter.

9. I have gone through the complaint filed by the respondent wherein it was contended that he has worked continuously from 1979 till 1985. Section 25(F) of the Industrial Disputes Act, 1947 was not complied with, while terminating his services.

10. By the impugned judgment of the Labour Court, it is evident that the petitioners established the fact of the project undertaken for construction of Walwade Percolation Tank. It was also admitted that the Tahsildar used to make the payment to the respondent. Besides the oral statement of the respondent, there was no evidence before the Labour Court to conclude that he had worked from 4.7.1979 till June 1985.

11. I find that the petitioners themselves have admitted that the respondent was working as a Watchman to guard the construction site of Walwade Percolation Tank. He was engaged on EGS, which has been lost sight of by the Labour Court. In any situation, Section 2(oo)(bb) of the Industrial Disputes Act, 1947 would be applicable to the case of the respondent. As the project work has come to an end, the respondent was disengaged. The exception to retrenchment under Section 2(oo)(bb) squarely applies in this situation.

12. Notwithstanding the above, this Court in the case of Bhausahab Nathu Falke (supra) has observed in paragraph Nos.20 and 21 as follows:-

“20. The records, in the cases in hand, apparently disclose that the recruitment of the respondents was under Employment Guarantee Scheme, the Collector was the controlling authority of the said scheme and providing funds for the salary and wages of the employees engaged under the said scheme and the employment of such employees was for the period during which the work under the scheme was available. As rightly submitted by the learned Assistant Government Pleader, in this regard, such employment automatically stands terminated on the expiry of the work undertaken under a particular scheme in relation to which the respondents were employed, as has been observed and ruled by the Apex Court in the above referred decision.

21. Ruling of the Apex Court in the cases of Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others, is clear to the effect that the employees engaged for specified work and for specific period of time, merely because such period of time

completed 240 days in a year, cannot create right in favour of such employees to claim the status of a "workman" on par with those define under Section 2(s) of the Industrial Disputes Act, 1947."

13. In the light of the above, I find that the conclusion of the Labour Court as well as the Industrial Court is rendered erroneous. Despite noting the specific stand of the petitioners and Exhibit C/16, indicating the work performed by the respondent as a Watchman on EGS and in the absence of any evidence putforth by the respondent besides his oral statement, both the impugned judgments are rendered unsustainable.

14. In the light of the above, the impugned judgments dated 31.10.1992 and 24.6.1994 are quashed and set aside. Complaint (ULP) No.10 of 1999, therefore, stands dismissed. Consequentially, the Revision Petition does not survive.

15. Rule is made absolute in the above terms.

16. Pending Civil Applications stand disposed off, in the light of the above.

(RAVINDRA V. GHUGE, J.)

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