

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2554 OF 1998

The Chief Executive Officer,
Zilla Parishad, Jalna

..Petitioner

Versus

1. Manohar Achyutrao Nirmal,
aged major, occ. unemployed,
r/o village Bori, Post. Dahipuri,
Tq. Ambad, District Jalna.

2. Judge, Labour Court, Jalna.

..Respondents

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Advocates appearing for :

Petitioner : Shri S.B.Deshpande,

Respondent 1 : Shri A.S.Shelke h/f Shri S.K.Shelke and

Respondent 2 : Shri V.G.Shelke, AGP

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CORAM : RAVINDRA V.GHUGE, J.

Dated : 20.2.2015

ORAL JUDGMENT :-

1. In view of the order passed today on Civil Application No.13461 of 2013, by consent, the Writ Petition is taken up for final disposal.

2. This petition was admitted by this Court on 26.6.1998. The petitioner was directed to pay last drawn wages to the respondent.

3. By order dated 8.2.2008, this Court recorded the statement of the petitioner, who tendered a letter dated 7.2.2008 marked "X" for identification, that the respondent was being paid last drawn wages and the petitioner would continue to make such payment.

4. Having heard the learned Advocates for the respective sides, I have gone through the petition paper book with their assistance.

5. The petitioner contends that the respondent was engaged as a Daily Wage Labourer / Gangman under the Public Works Sub-Division, Jalna from 1.4.1981 to 30.9.1981 and from 2.10.1981 to 28.2.1982, when he was orally terminated.

6. The respondent had questioned his oral termination, dated 28.2.1982, by raising an industrial dispute, which was then referred to the Labour Court as Reference (IDA) No.43 of 1995. He had contended that he was working continuously from 1.4.1981 till 28.2.1982. As such, the rival contention of the petitioner and respondent is as regards an alleged break in service for only one day on 1.10.1981. The name of the respondent was mentioned at Sr. No.95/A in the seniority list, that was produced on record. It was not disputed that the respondent was orally terminated from employment.

7. It is not in dispute that the respondent has been out of employment from 1.3.1982 for a period of about 33 years. Considering the view taken by the Honourable Supreme Court in the judgments delivered in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009], Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136]

and in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558], I do not find it appropriate to maintain the directions of the Labour Court, issued in the impugned judgment and award, granting reinstatement with effect from 28.2.1982 and with continuity of service. The respondent is already deprived of the backwages by the Labour Court.

8. It is also not disputed that the respondent was orally terminated from employment. Contention of the petitioner is that the respondent has not worked continuously and in the uninterrupted service of the petitioner from 1.4.1981 till 28.2.1982, since there was a break in service on 1.10.1981 and that he was engaged as a Labourer on daily wages, without following any recruitment procedure.

9. It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos.4 and 5 in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558] as under:-

“4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished

between a daily wager who does not hold a post and a permanent employee.”

10. The Honourable Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], has held in paragraph No.14, as under:-

“ It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

11. Paragraph No.20 of the judgment in the case of Mohanlal (supra) reads as under:-

“ We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh : (2013) 5 SCC 136 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors

including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

12. Paragraph No.29 of the judgment in the case of Gitam Singh (supra) reads as under:-

“ In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum.”

13. The respondent has been paid his last drawn wages from July 1998 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Man Singh (supra), Mohanlal (supra) and in the case of Gitam Singh (supra), I am convinced that the impugned judgment and award

deserves to be partly set aside.

14. Taking into account that the respondent was granted last drawn wages from July 1998 , under orders of this Court and keeping in view the fact that he is out of employment for last 33 years, an amount of Rs.50,000/- as compensation, in lieu of reinstatement and continuity of service, would be an appropriate relief.

15. As such, this petition is partly allowed. The impugned judgment and award, dated 5.2.1998, is modified. The petitioner is directed to pay compensation of Rs.50,000/- (Rs. Fifty Thousand only/-) in lieu of reinstatement and continuity of service to the respondent, besides the wages paid to the respondent under Section 17B of the ID Act.

16. Rule is accordingly, made partly absolute.

(RAVINDRA V.GHUGE, J.)

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akl/d