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

WRIT PETITION NO. 4672 OF 1999

Jalgaon Municipal Council,
Jalgaon.
Through it's Chief Officer.

...PETITIONER

-VERSUS-

Gangubai Bhagwat Sapkale,
Age : Major, Occ : Nil,
R/o Kanchannagar, Behind Ambika
Grocery Stores, Jalgaon,
District : Jalgaon.

...RESPONDENT

....

Mr.P R Patil, Advocate for the Petitioner.
Mr.Patil Vijay Y., Advocate for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd July, 2015

Oral Judgment:

1 This petition was admitted by this Court by order dated 07.10.1999. Interim relief in terms of prayer clause (C) was granted vide which the execution and operation of the impugned award dated 15.05.1999 delivered by the Labour Court in Reference (IDA) No.6/1997 was stayed and suspended.

2 Shri P.R.Patil, learned Advocate for the Petitioner/ Municipal Council, which is now the Municipal Corporation, submits that the Respondent was engaged as a “Safai Kamgar” on daily-wages as and when the work was available. Though she claimed to have worked with the Petitioner in between 1985 till 1993, the Petitioner had produced the day-wise chart indicating the dates on which the Respondent had worked with the Petitioner, before the Labour Court. She had put in about 111 days during the said period. Despite the same, the impugned award has been delivered.

3 Shri P.R.Patil submits that the Respondent alleged oral termination from 1993. No specific date of oral termination was mentioned in the statement of claim filed by her before the Labour Court. The industrial dispute raised by the Respondent was referred to the Labour Court and was registered as Reference (IDA) No.6/1997. He further states that in the very first paragraph of the statement of claim, a vague and ambiguous date was mentioned by the Respondent stating that she joined in 1985 and was terminated in 1993. A reference under Section 2A of the Industrial Disputes Act, 1947 could not have been made by relying upon such vague averments.

4 The Respondent alleged non compliance of Section 25F of the

Industrial Disputes Act, 1947 while assailing her alleged oral termination in 1993. Shri PR.Patil further submits that there was no question of termination since the Respondent was engaged intermittently and on “as and when required” basis. The record of the Petitioner reflects that she had put in 111 days. She claims to have worked with the Petitioner for seven years.

5 He further submits that a proper Written Statement was filed taking up all these grounds. The onus and burden of proving continuous employment lies on the shoulders of the Respondent. Despite the work details produced by the Petitioner before the Labour Court, it drew an adverse inference against the Petitioner and concluded that because the attendance register and salary book/ muster book were not produced, it needs to be presumed that the Respondent has worked continuously with the Petitioner.

6 Shri PR.Patil further submits that the Petitioner is already over burden with excess employees. Reinstating the Respondent would amount to foisting an employee on the Petitioner Corporation. The Labour Court has lost sight of these material aspects and has granted reinstatement with continuity of service from 31.12.1993. The back-wages have been denied.

7 He further submits that the date of termination 31.12.1993 is unsubstantiated. There was no averment by the Respondent as regards the date of joining and the date of termination. In fact she had admitted in her cross-examination that she has been terminated in 1993 and does not remember the date or month of her termination. She also admitted that she did not remember the date of joining the Petitioner in 1985. He, therefore, submits that this petition deserves to be allowed and the impugned judgment and award deserves to be quashed and set aside.

8 Shri Vijay Patil, learned Advocate for the sole Respondent, has strenuously defended the impugned judgment and award. He submits that the Respondent did not remember the date of joining and the date of termination. She remembered the years in which she joined and was orally terminated. She has worked continuously and completed 240 days as a “Safai Kamgar” in every calendar year with the Petitioner. She had no record to be placed before the Labour Court. The Petitioner did not produce the relevant documents despite the application of the Respondent dated 26.03.1999 having been allowed.

9 Shri Vijay Patil further submits that an adverse inference was rightly drawn by the Labour Court as the Petitioner failed to produce any

record before the Labour Court. He, therefore, submits that this petition be dismissed with costs. He has prayed for full back-wages from the date of award till this date in the light of Section 17(B) of the Industrial Disputes Act, 1947.

10 I have considered the submissions of the learned Advocates for the respective sides. The Labour Court has answered the reference in the affirmative purely on the ground of adverse inference. It is not in dispute that the chart was produced by the Petitioner purportedly based upon its records and the number of days worked were placed before the Labour Court. No doubt the Petitioner could have produced its records depending on their availability before the Labour Court so as to indicate as to whether, the Respondent/ Employee had been working regularly and whether, her name appeared in any of its records in the list of daily-wagers. Having not so done, the Labour Court drew an adverse inference and answered the Reference in the affirmative.

11 It is apparent that a serious controversy as regards the number of days worked by the Respondent, is at issue. It is not disputed that the Respondent has been out of employment since 1993. She was allegedly working for about 07 years and has been out of employment for 22 years. It is stated that she is in her fifties. The date of retirement of an

employee is 58 years with the Petitioner Corporation. The last drawn wages of the Respondent were at the rate of Rs.20/- per day. The amount of Rs.8860/- has been deposited in this Court on 15.09.2000 pursuant to the order of this Court dated 14.07.2000 in Civil Application No.744/2000. The said amount has been invested and must have gathered interest.

12 Since I am not convinced by the conclusions of the Labour Court that the Respondent/ Employee has worked continuously for 07 years despite lack of evidence to establish continued employment, I could have ordered remand of the reference proceedings to enable the parties to lead further evidence, by imposing costs upon the Petitioner for having failed to produce certain documents before the Labour Court. However, I think it otherwise since this would further vex the parties in litigation. Instead of doing so, the impugned award could be modified by quantifying compensation to be paid to the Respondent/ Employee in the light of the fact that she is not in employment for more than 22 years.

13 In a similar situation before the Apex Court, it was held that quantifying the compensation in lieu of reinstatement in service and continuity, would be more equitable and pragmatic. In the case of *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub*

Division, Kota v/s Mohanlal reported in **2013 LLR 1009**, the Apex Court held in paragraph 20 as follows:-

“20. 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.”

14 In the matter of *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, **[(2013) 5 SCC 136]**, the Apex Court concluded in paragraph 29 as follows:-

“29. 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.”

15 In the case of *BSNL Vs. Man Singh*, [(2012) 1 SCC 558], the Apex Court held in paragraphs 4 and 5 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.”*

16 So also, in the case of *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327], the Apex Court held in paragraph 14 as follows:-

- “14. *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.”

17 This Court has also taken a similar view in the cases of *State of Maharashtra v/s Sanjay Ramchandra Yadav* in **Writ Petition No.5474/2012 decided on 24.12.2013** and the *State of Maharashtra v/s Santosh Gorakh Patil* reported in **2015(3) Mh.L.J. 922.**

18 Recently, the Apex Court dealt with a similar issue in the case of *Bhavnagar Municipal Corporation v/s Jadeja Govubha Chhanubha* reported in **2015 LLR 160 (SC) : 2014 (13) Scale 434.** While drawing it's conclusions, the Apex Court considered that the employee was granted reinstatement with continuity of service and 65% of the back-wages. It was in those circumstances that the Apex Court ordered the payment of Rs.2,50,000/- as compensation to the concerned employee.

19 In the light of the above, this Writ Petition is partly allowed. The impugned judgment and award dated 15.05.1999 directing the reinstatement with continuity of service, stands modified and replaced by the direction to the Petitioner/ Corporation to pay compensation of

Rs.1,75,000/- (Rupees One Lac Seventy Five Thousand) to the Respondent/ Employee for having put in 07 years of employment, within a period of SIXTEEN WEEKS from today.

20 This shall be in addition to the amount of Rs.8860/- deposited by the Petitioner in this Court, which the Respondent/ Employee shall withdraw with accrued interest and without conditions by producing tangible identity proof to the satisfaction of the Registry of this Court.

21 The Respondent/ Employee is, therefore, precluded from making any further claim against the Petitioner of any nature whatsoever arising out of her employment and non employment, in the light of the compensation quantified as above.

22 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)