

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1322 OF 2010

1. The State of Maharashtra,
Through the Superintending Engineer,
Earthquake Rehabilitation Circle,
Administrative Building, Latur,

2. The Executive Engineer,
Ekatmik Ghatak,
Earthquake Rehabilitation Circle,
Administrative Building, Latur

PETITIONERS

VERSUS

Pralhad S/o Govind Kamble,
Age-38 years, Occu : Nil,
R/o Savewadi, Latur,
District Latur

RESPONDENT

Mr.S.G.Sangle, AGP for the petitioners.
Mr.T.M.Venjane, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/09/2015

ORAL JUDGMENT :

1. This petition was admitted by order dated 16/12/2010 and interim relief in terms of prayer clause "C" was granted. Consequentially, the impugned judgment of the Industrial Court dated 05/10/2009 in Revision (ULP) No.7/2008 was stayed. It is not in dispute that the respondent claims to have worked with the petitioners for 17 months in between January 1995 till May 1996 and

is out of employment for the last 19 years.

2. The petitioners submit that on account of a devastating earthquake that occurred on 30/09/1993 affecting areas in and around Latur District and which seriously affected Sastur and Killari areas, the rehabilitation programme was undertaken by the State Government. A special authority was created as is evident from the name of the petitioners for carrying out the Earthquake Rehabilitation.

3. The respondent is one such employee who was temporarily engaged as a "Driver" purely on daily wages. He worked in between January 1995 upto May 1996. Since he was unavailable continuously for 5 days from 01/06/1996 upto 05/06/1996, the petitioners engaged another Driver so as to ensure that the Rehabilitation Programme will not be affected. This was taken to be an act of oral termination.

4. The respondent preferred Complaint (ULP) No.30/1996 under the M.R.T.U. and P.U.L.P.Act, 1971. By judgment and order dated 04/06/1997, the said complaint was dismissed on the ground that the respondent has not completed 240 days in the continuous and

uninterrupted service of the petitioners in the 12 consecutive calendar months preceding the date of reference. Another ground for dismissal of the complaint was that the Labour Court concluded that the respondent has prepared a bogus "Experience Certificate" dated 15/04/1995.

5. Criminal proceedings were accordingly lodged against the respondent.

6. After 11 years from the date of the dismissal of the complaint, the respondent preferred Revision (ULP) No.7/2008 under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971 on 23/04/2008. By the impugned judgment dated 05/10/2009, the Industrial Court set aside the conclusions of the Labour Court and directed the reinstatement of the respondent w.e.f. 05/06/1996 with continuity of service and 25% back wages.

7. The petitioners are aggrieved with the impugned judgment for the following reasons :-

- a. The Revision ULP was barred by limitation.
- b. Conclusion of completion of 240 days arrived at by the Industrial Court was erroneous.

- c. Having worked for 17 months and out of employment for 19 years, no reinstatement could have been granted.
- d. The respondent was engaged on daily wages for the Earthquake Rehabilitation Programme and the nature of the work is not of a perennial character.

8. Mr.Venjane, learned Advocate for the sole respondent has strenuously supported the impugned judgment of the Industrial Court. Contention is that the Industrial Court has rightly concluded that the Sundays and public holidays are to be reckoned with for computing 240 days in continuous service. Two Witnesses namely Vilas Sambhaji and Khushalrao have stated that the respondent was in continuous employment.

9. The respondent did not prefer his revision petition because the Criminal Proceedings were initiated against him and the moment he was acquitted on 03/03/2008 by judgment of the competent Court in RCC No.708/1997, he lodged the Revision Petition on 23/04/2008.

10. Mr.Venjane submits that, as the respondent has completed 240 days in continuous service, he is entitled for reinstatement. He has been properly selected and appointed. Similarly situated persons have been subsequently granted continuous service in the light of the

Government Resolution dated 02/06/2000 and the letter of the Upper Secretary dated 11/01/2002 indicating that the Government desires to fill up 7 posts of Drivers, 17 posts of Peons and 77 posts of Clerks.

11. Mr.Venjane further submits that the respondent is willing to give up continuity of service and 25% back wages as is awarded by the Industrial Court in the event the petitioners extend the benefit of the GR and the letter of the Upper Secretary to the respondent as the respondent has about 12 to 15 years of service left. He further submits that the petitioners could be directed to consider his case.

12. I have taken into account the submissions of the learned Advocates as have been recorded hereinabove.

13. The Industrial Court has erroneously held that Sundays / Weekly Holidays as well as Public Holidays are to be reckoned with for computing 240 days in the case of a Daily Wager. It is only in the case of the monthly rated employees that the paid holidays are to be taken into account. Based on this erroneous understanding, the Industrial Court has calculated 12 calendar months preceding the date of termination and has concluded that the respondent has

completed 240 days in the continuous and uninterrupted service of the petitioners.

14. Notwithstanding the above, it is trite law that mere completion of 240 days in continuous employment is not the only criteria for regularizing or reinstating an employee, especially in public employment where the provisions of the Standing Orders as found under the Industrial Employment (Standing Orders) Act, 1946 and the Standing orders framed under the Bombay Industrial Relations Act, 1946 are not applicable.

15. It is equally well settled that the onus and burden of proving continuous employment is on the employee who makes such a claim. A chart at Exh.C-9 was produced by the petitioners alongwith a written statement indicating the exact number of days on which the respondent had worked and for which he was paid daily wages. Exhibit C-9 indicated 216 days of actual working.

16. Surprisingly, the Industrial Court has concluded that the respondent has worked continuously for 240 days by observing that, *“according to the statement on oath of the complainant, he worked during the entire year.”* It is on the basis of the said misconception

that the Industrial Court concluded completion of 240 days in paragraph No.11, 14, 15 and 16 of the impugned judgment.

17. It cannot be overlooked that the petitioners have been established for the earthquake Rehabilitation Programme. By the Government Resolution, such employees, who have continuously worked on the Rehabilitation Programme from 1995 till 2002, were sought to be appointed by filling up the posts of 7 Drivers, 17 Peons and 77 Clerks. The respondent had worked only for about 17 months. He is out of employment for the last 19 years.

18. In the above backdrop, I find it appropriate to rely upon the ratio laid down by the Apex Court, of quantifying compensation in lieu of reinstatement with continuity and back wages, in the following 4 judgments :-

1. *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal* [2013 LLR 1009],
2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh* [(2013) 5 SCC 136],
3. *BSNL Vs. Man Singh* [(2012) 1 SCC 558] and
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327].

19. Though I have arrived at a conclusion that the impugned judgment is unsustainable, I cannot be oblivious to the fact that the respondent has been granted reinstatement in 2009 by the impugned judgment of the Industrial Court and which has been stayed by this Court.

20. As such, this petition is partly allowed. The impugned judgment of the Industrial Court dated 05/10/2009 is set aside. The petitioners are directed to pay an amount of Rs.50,000/- (Rs.Fifty Thousand only) to the respondent by way of compensation for having worked over a period of 17 months. Compensation shall be paid within a period of 12 weeks from today, failing which the said amount shall carry interest @ 6% from the date of judgment of the Industrial Court.

21. Rule is, accordingly, made partly absolute.

(RAVINDRA V. GHUGE, J.)