

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3308 OF 1995

The Maharashtra State Board
of Secondary and Higher Secondary
Education,
Aurangabad Divisional Board,
Aurangabad

PETITIONER

VERSUS

Mr.Shaikh Issannuddin Sk. Naseeruddin,
Age-Major, Occu-Service,
C/o Trade Union Centre,
Kotwalpura, Aurangabad

RESPONDENT

WITH
CIVIL APPLICATION NO.1962 OF 2014

Sk. Issanuddin Sk Nasiruddin,
Age-50 years, Occu-NIL,
R/o Galli No.21, Indira Nagar,
Nava Baijipura, Aurangabad

APPLICANT

VERSUS

Maharashtra State Board of SCC Board,
and Higher Secondary Education,
Aurangabad Divisional Board, Aurangabad,
Through its Divisional Secretary

RESPONDENT

WITH
CIVIL APPLICATION NO.786 OF 2000

Shaikh Isamoddin S/o Sk.Nasiroddin,
Age-Major, Occu-Nil, R/o Indira Nagar,
New Baijipura, Sr.No.13, Near Bricks
Furnished Area, Aurangabad

APPLICANT

VERSUS

1. The Divisional President,
Maharashtra State Secondary and
Higher Secondary Education Board,
Osmanpura, Aurangabad,

2. The State of Maharashtra

RESPONDENTS

WITH
CIVIL APPLICATION NO.787 OF 2000

The Maharashtra State Board of Secondary
and Higher Secondary Education,
Aurangabad Division,
Aurangabad

APPLICANT

VERSUS

Mr.Shaikh Isamoddin S/o Sk.Nasiroddin,
Age-Major, Occupation : Nil,
Resident of Indira Nagar,
New Baijipura, Aurangabad

RESPONDENT

WITH
CIVIL APPLICATION NO.5807 OF 1996

Shaikh Issanoddin S/o Sk.Nasiroddin,
Age-Major, Occu-Nil,
R/o Indiranagar, New Baijipura,
Sr.No.13, Near Bricks Furnished Area,
Aurangabad

APPLICANT

VERSUS

1. The Divisional President,
Maharashtra State Secondary and
Higher Secondary Education Board,
Osmanpura, Aurangabad,

2. The State of Maharashtra,

RESPONDENTS

Mr.D.V.Soman, Advocate for the petitioner.
Mr.C.V.Thombre, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/08/2015

ORAL JUDGMENT :

1. While taking up the civil application for hearing, considering that the pending petition has been instituted in 1995, I have called upon the learned Advocates to canvass their submissions on the petition itself. Thus, the learned Advocates have graciously advanced their final submissions on the petition.

2. This petition was Admitted by order dated 18/07/1995. The petitioner was directed to deposit all arrears of wages in this Court and so also the monthly salary for each month, to be deposited on or before the 10th day of each month until further orders. Liberty was granted to the respondent to withdraw the amounts being deposited. It is stated that this order is in operation till this date and the petitioner has been depositing the monthly wages in each month till this date. As such, the amount deposited by the petitioner is approximately Rs.1,50,477/- as on date, excluding the interest accrued, as per the calculations submitted by the petitioner vide the chart which is marked as Exhibit "X" for identification.

3. The petitioner has strenuously criticized the impugned

judgment and award dated 20/04/1995 delivered by the Labour Court, Aurangabad in Ref. (IDA) No.107/1989.

4. It is stated by Mr.Soman that the respondent had claimed to be in the employment of the petitioner as a labourer on daily wages from 01/10/1984 till 17/02/1988. He has roughly worked for about 3 years and 3 months. He is out of employment for the last 27 years and 6 months.

5. Mr.Soman further submits that the respondent was given work intermittently as a "Majdoor". Whenever any work was available, it used to be allotted to him. He, however, concedes that despite an opportunity being given by the Labour Court, the petitioner / Department did not file its written statement and merely objected to the order of reference, by which the industrial dispute raised by the respondent pertaining to his termination, was referred to the Labour Court.

6. Mr.Soman further submits that the Labour Court has delivered a cryptic order by way of an award. There is no whisper, much less any discussion about completion of 240 days in continuous employment so as to allege non-compliance of section 25-F of the I.D.

Act. He, therefore, vehemently submits that the impugned award is unsustainable.

7. Mr.Thombre, learned Advocate representing the sole respondent, has referred to an order passed by this Court on 06/03/2012 in WP No.2559/1993 in the matter of this petitioner itself as against Janardan Laxman Kuranjal. He submits that the said case was on similar set of facts. He points out that by order dated 16/03/2012, the order dated 06/03/2012 was modified by recording the statement of the petitioner that the respondent employee had been reinstated as a daily wager and he has been working regularly. He, therefore, prays that a similar order be passed by this Court.

8. In so far as the merits of the claim of the respondent is concerned, Mr.Thombre strenuously submits that a specific averment to the extent of completion of 240 days was made in the statement of claim. Non-compliance of section 25-F and 25-G was also averred. The petitioner chose not to file its written statement and also did not lead any oral evidence. No documents were placed on record. The Labour Court has, therefore, rightly allowed the reference and directed reinstatement with continuity in service and full back wages.

He, therefore, prays that this petition deserves to be dismissed with costs.

9. I have considered the submissions of the learned Advocates and have gone through the record with their assistance. Considering the impugned award, it is apparent that the Labour Court has lost sight of the fact that the onus and burden of proving continuous employment for 240 days in a calendar year preceding the date of reference, lies on the workman. It is trite law that a claim or a suit or a complaint cannot be allowed merely relying upon an affidavit or the oral contentions of the claimant.

10. The impugned order is not only cryptic, but is an outcome of non-application of mind. The Labour Court has allowed the reference in a single sentenced reason. It is observed in paragraph No.6 of the award as under :-

“6. Though the Ist party was given last chance to file written statement but he failed to file written statement. The Ist party only filed say on the point of preliminary issue. For the said reason, I answer the remaining ex-parte and pass the following order :

ORDER

1. The reference is allowed.

2. *The Ist party is directed to reinstate the IInd party employee in service with continuity and full back wages.*
3. *The copy of Award be sent to the Dy.Commissioner of Labour, Aurangabad."*

11. Back wages have been granted by the Labour Court as if it is a bounty. Neither has the respondent workman led evidence, nor was any documentary evidence before the Court to conclude that he had completed continuous 240 days in employment. There was no pleading, much less evidence in support of the claim of back wages. The Labour Court, therefore, could not have granted back wages. In my view, the impugned award is perverse and erroneous.

12. Notwithstanding the above, the respondent has an award in his favour directing his reinstatement with continuity and full back wages. Considering the award as discussed above, I am not inclined to pass a similar order as has been passed by this Court on 06/03/2012 in the above referred matter pertaining to Janardan Laxman Kuranjal (supra).

13. The Apex Court, in similar circumstances of an employee having worked for about 3 years and having been out of employment in between 15 to 25 years, has quantified compensation in following

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,*
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327.*

14. This Court has relied upon by the view taken by the Apex Court in the abovesaid cases in the matter of State of Maharashtra Vs. Santosh Gorakh Patil and another, 2015(3) Mh.L.J.922. The relevant observations in paragraph Nos.9 to 13 are as under :-

“9. I, however, do not desire to go into this aspect since the respondent has been out of employment for the past 28 years. He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009] and in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], I am convinced that the impugned judgment and award deserves to be partly set aside.

10. 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."

11. 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."

12. 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."

13. 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."

15. In the light of the above, the impugned judgment and award dated 20/04/1995 delivered by the Labour Court in Ref.(IDA) No.107/1989 is modified and is replaced by a direction to the petitioner to pay compensation of an amount equivalent to the amount deposited by the petitioner in this Court, with accrued interest. The amount deposited by the petitioner in this Court from 17/08/1995 till today, is Rs.150,477/-. Accrued interest will also be payable to the respondent.

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16. The respondent shall, therefore, withdraw the entire amount deposited in this Court with accrued interest in lieu of reinstatement with continuity and full back wages.

17. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

18. All the pending civil applications, do not survive and hence are disposed of.

(RAVINDRA V. GHUGE, J.)