

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3349 OF 2005

Maharashtra State Electricity Board,
Through the Executive Engineer (O & H)
MSEB, Ambejogai,
Dist. Beed

PETITIONER

VERSUS

Bhagwan S/o Bhaurao Mundhe,
Age-55 years, Occu-Business,
R/o Dadi, Tal.Ambejogai, Dist.Beed

RESPONDENT

WITH
WRIT PETITION NO.1031 OF 2013

Bhagwan S/o Bhaurao Mundhe,
Age-59 years, Occu-Nil,
R/o At Post Dabhi,
Tq. Parli Vaijnath,
Dist. Beed

PETITIONER

VERSUS

1. The State of Maharashtra

2. The Executive Engineer,
O & M Division,
M.S.E.B. Ambajogai,
Dist.Beed

RESPONDENTS

Mr.P.B.Paithankar, Advocate for the petitioner.
Mr.M.B.Ubale, Advocate for the petitioner in WP No.1031/2013.
Mr.S.V.Kuptekar h/f Mr.V.D.Salunke, Advocate fr the respondent.
Mr.S.G.Sangle, AGP for respondent No.1 in WP No.1031/2013.
Mr.A.S.Shelke h/f Mr.S.M.Godsay, Advocate for respondent No.2 in
WP No.1031/2013.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/09/2015

ORAL JUDGMENT :

1. The first petition was admitted by this Court on 17/10/2007. No interim relief was granted to the petitioner /Management.

2. The second petition preferred by the employee is pending admission. By order dated 31/01/2014, the second petition is to be heard alongwith the first petition. Learned Advocates for the respective sides have no objection if this Court hears these matters.

3. Since both the petitions are connected, arising out of the connected cause of action, the decision in the first petition would therefore lead to the disposal of the second petition.

4. For the sake of brevity, the litigating parties in these two petitions shall be referred to as the Management and the Employee.

5. The Management is aggrieved by the judgment and award dated 31/01/2005 delivered by the Labour Court in Ref.(IDA) NO.21/1987. The employee is granted reinstatement with continuity of service w.e.f. 15/06/1982 on daily wages. The oral termination dated 15/06/1982 has been set aside. Back wages have not been granted.

6. Mr.Paithankar, learned Advocate for the Management submits that the employee was never allotted regular work. Though he claims that he was working from 1973 on nominal muster roll (NMR), he had worked intermittently as and when work of casual nature was available. Though he claimed to have completed 240 days in continuous employment in each calendar year, he had never worked continuously and there was no evidence before the Labour court except the oral statement of the employee.

7. Mr.Paithankar draws my attention to the judgment impugned, which would clearly indicate that the Labour Court has believed the oral statement of the employee by concluding that the Management is trying to defeat the claim of the employee by not producing the NMR before the Court. He submits that the onus and burden is cast upon an employee to prove continued employment.

8. He further submits that the entire wages of the employee from 31/01/2005, which is the date of the impugned judgment, till 18/11/2011 when the employee attained the age of superannuation, have been deposited in this Court. By order dated 31/01/2014 delivered by this Court in C.A.No.13171/2013 in the second petition, the amount of Rs.3,19,520/- has already been withdrawn by the

employee.

9. He, therefore, submits that after having worked intermittently for a few days in between 1973 to 1980 and since the employee has attained the age of superannuation on 18/11/2011, it would be a travesty of justice to sustain the judgment of the Labour Court. He, therefore, prays for allowing the first petition and for dismissing the second petition.

10. Mr.V.D.Salunke, learned Advocate alongwith Mr.M.B.Ubale, learned Advocates for the employee, have strenuously supported the impugned judgment. Contention is that a finding on facts by the Labour Court should not be interfered with by this Court merely because a second view is possible. They further submit that back wages have not been granted by the Labour Court. So also, the Labour Court has directed the reinstatement of the employee on daily wages. The employee has not challenged the impugned award dated 31/01/2015 and therefore has accepted the said award. He has already earned his entire salary for the period 31/01/2005 till 18/11/2011.

11. Mr.Salunke and Mr.Ubale, therefore, submit that the impugned

award has already been implemented and in the light of the fact situation as above, it would be too harsh to reopen the whole issue and seek recovery of money paid to the employee in the event the petition filed by the Management is allowed.

12. I have considered the submissions of the learned Advocates recorded as above.

13. It is evident from the impugned judgment that besides the oral statement of the employee, there was no document on record to prove that the employee had worked continuously for 240 days in each year from 1973 till 1980. The stand taken by the Management before the Labour Court was that the employee had worked for 60 days in 1982 and thereafter had worked intermittently. The Labour Court has concluded that since the Management did not produce the muster roll before the Labour Court, the contention of the employee (oral statement) is to be accepted. In my view, the conclusions drawn by the Labour Court are against trite law.

14. Nevertheless, the subsequent events post admission of the first petition cannot be overlooked. An amount of Rs.3,19,520/- has been withdrawn by the employee from this Court. The Apex Court, in the

following judgments, has held that where an employee has worked for short tenures and is out of employment for a long duration, it would be impractical to direct reinstatement.

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].

15. In the facts situation as above, it would indeed harsh to direct recovery of Rs.3,19,520/- withdrawn by the employee more than 16 months ago. As such, in my view, the challenge to the impugned award is rendered of an academic interest.

16. Considering the ratio laid down by the Apex Court in the above referred judgments, the amount withdrawn by the employee can be said to be compensation in lieu of reinstatement.

17. With the above observation, the first petition is disposed of by recording that the amount withdrawn by the employee shall be in satisfaction of the impugned award.

18. The employee shall therefore be precluded from raising any claim arising on account of his employment and non employment with the petitioner.

19. Rule is, therefore, discharged.

20. In the second petition the employee has challenged the order of the Labour Court dated 07/11/2012 in Criminal (ULP) No.18/2011 His complaint (ULP) No.85/2005, seeking implementation of the said award has been allowed by the Industrial Court on 17/01/2011. The employee desires that the Management/Officials be punished for disobedience of the order of the Industrial Court u/s 48(1) of the M.R.T.U. and P.U.L.P. Act, 1971.

21. Considering the fact that the employee has already withdrawn the amount towards his wages as recorded above, the second petition need not be entertained and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)