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

WRIT PETITION NO. 2642 OF 2013

APPA ANANT WALUNJ

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr.Barde Parag Vijay.

AGP for Respondent Nos.1 to 6 : Mrs.V.A.Shinde.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th June, 2015

Oral Order:

1 Mr.Barde, learned Advocate appears for the Petitioner and the learned AGP appears for all the Respondents.

2 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3 The issue involved in this petition turns upon the action of the Respondents in not taking the Petitioner on Converted Regular Temporary Establishment (for short CRTE) as per the Kalelkar Award after fulfilling the condition of having worked for five years with the Employer.

4 Though the learned Advocates for the Petitioner and the Respondents have argued at length and have set out a host of factors, I would be advertent to their submissions only to the extent of the issue posed before this Court.

5 The Petitioner had joined employment as a daily rated employee on 30.12.1986. He was terminated by order dated 01.04.1988. He preferred Complaint (ULP) No.55/1988 before the Labour Court at Ahmednagar. By judgment and order dated 25.08.1992, the complaint was allowed and the Labour Court issued the following directions:-

“Complaint allowed.

It is hereby declared that the Respondents have committed unfair labour practices by terminating the services of complainants.

The Respondents are hereby ordered to cease and desist from the indulgence of unfair labour practices, and to reinstate the complainants NV Navale, AA Walunj and UY Khamkar with continuity of service and half back-wages from the date of their termination.

The Respondent to implement this order within one month since the date of this order.

No order as to costs.”

6 It is, therefore, contended that since the Petitioner was granted continuity of service and 50% back-wages from the date of his termination, there can be no dispute as to whether, the Petitioner has worked with the Respondents or not.

7 It is further submitted that after the Petitioner was reinstated in employment on 03.05.1993 pursuant to the judgment of the Labour Court, he worked continuously and reached the age of superannuation on 31.05.2010. The retiral benefits inclusive of pensionary benefits were calculated.

8 Mr.Barde submits that as per the policy of the Respondents, a notice prior to the retirement of every employee is issued and the employee is made aware about the date of retirement and his entitlement to the benefits as are calculated. The Petitioner received such a notice six months prior to his retirement. Nevertheless, the Petitioner was pursuing the Respondents for bringing his name on CRTE from 30.12.1991. He objected to the act of the Respondents of bringing the Petitioner on CRTE on 03.05.1998 in violation of the Kalelkar Award. He also issued notice to the Respondents dated 07.11.2009, but in vain. Since the Petitioner felt frustrated by the acts of the Respondents, he preferred Complaint (ULP) No.62/2009, which was instituted on 03.12.2009.

9 Mr.Barde submits that by the impugned judgment and order dated 04.09.2012, the Industrial Court dismissed the complaint on the ground that the complaint is belatedly filed as the Complainant/ Petitioner

herein was not in employment from the date of his termination i.e. 01.04.1988 till his reinstatement dated 03.05.1993 and that the Respondents have properly calculated five years of working of the Petitioner from the date of his reinstatement 03.05.1993 till 03.05.1998.

10 Mr.Barde, therefore, submits that it is purely a matter of calculation which has been lost sight of by the Industrial Court. The claim of the Petitioner has been dealt with casually and the impugned judgment besides being perverse, reflects non application of mind. He, therefore, prays for allowing the petition.

11 Learned AGP has strenuously submitted that it is undisputed that the Petitioner was terminated on 01.04.1988 and was reinstated on 03.05.1993. The Kalelkar Award expects an employee to put in temporary service for a period of five years with the Respondent Department. Only upon achieving this distinction, can the said employee be taken on CRTE. The Respondents are neither prejudiced against the Petitioner nor have they treated his claim as being adversarious.

12 Learned AGP further submits that actual working of the Petitioner from 03.05.1993 has been taken into account and the moment he completed five years in temporary employment on 02.05.1998, he was

taken on CRTE on 03.05.1998. The Industrial Court has properly dealt with the grievance put forth by the Petitioner and the impugned judgment is neither perverse nor unsustainable.

13 Having considered the submissions of the learned Advocates, I have gone through the petition paper book with their assistance.

14 The issue revolves around the judgment and order of the Labour Court. The directions issued by the Labour Court have been reproduced herein above. It is not in dispute that continuity of service has been granted to the Petitioner by the Labour Court while setting aside his termination. It is also not in dispute that the Respondents have not challenged the said judgment of the Labour Court before the Industrial Court under Section 44 of the MRTU & PULP Act, 1971. Neither is the contention of the learned AGP that the said judgment was questioned in this Court by filing a writ petition.

15 It calls for no discussion on the fact that once the termination of an employee has been set aside and continuity of service has been granted with or without back-wages, there remains no termination in the eyes of law. There can be no argument that the termination would tantamount to break in service in the teeth of continuity of service having

been granted by the court of competent jurisdiction.

16 In my view, termination meted out to the Petitioner on 01.04.1988 is not in existence in the eyes of law. In this backdrop, continuity of service from 01.04.1988 will have to be reckoned. The Petitioner has, therefore, completed five years in employment of the Respondents on 29.12.1991 thereby, rendering him eligible to be taken on CRTE on 30.12.1991. For this reason, the impugned judgment of the Industrial Court is rendered unsustainable.

17 The Industrial Court has arrived at a conclusion that the complaint is belatedly filed. Failure of the Respondents to take the Petitioner on CRTE on 30.12.1991 and bringing him on CRTE on 03.05.1998 in the face of the representations and grievances put forth by the Petitioner, would render the cause of action of a recurring nature. Moreover, the complaint has been filed prior to the actual superannuation of the Petitioner. In short, the complaint was filed while the Petitioner was in service.

18 A pedantic approach appears to have been adopted by the Industrial Court in holding that the Petitioner had approached the Court at a belated stage. No other ground has been put forth by the Respondents

to contend that the Petitioner has not put in continuous service as is required under the Kalelkar Award even after his reinstatement.

19 In the light of the above, this Writ Petition is allowed. The impugned judgment and order of the Industrial Court dated 04.09.2012 delivered in Complaint (ULP) No.62/2009 is quashed and set aside. The retiral benefits of the Petitioner shall be computed within a period of FOUR MONTHS by presuming that he has been taken on CRTE w.e.f. 30.12.1991. The Complaint is, therefore, allowed. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)