

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2507 OF 2015

1. The Executive Engineer,
Public Works Division,
Ambajogai, Dist. Beed,

2. Sub Divisional Officer,
Public Works Division,
Ambajogai, Dist. Beed

PETITIONERS

VERSUS

Sampat Deorao Phande,
C/o Comb. Rajendra Vihare,
Secretary, Marathwada Raste Va
Paat Bandhare Sanghatana,
Medical College Compound,
Ambajogai, Dist. Beed

RESPONDENT

Mr.V.A.Shinde, AGP for the petitioners.
Mr.P.L.Shahane h/f Mr.Parag P. Shahane, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 22/07/2015

ORAL JUDGMENT :

1. While issuing notice before admission, I had passed the following order on 09/03/2015 :-

“1. The contention of the petitioners is that the respondent claimed to have worked as a "Watchman" on a road roller from 11/01/1987 and was orally terminated on 01/08/1989.

2. *Industrial dispute is raised in 2004 after the passage of about 15 years, Reference IDA No.5/2004 was allowed by the impugned judgment and award dated 24/08/2010 and the respondent was directed to be reinstated with continuity w.e.f. 01/08/1989. It is submitted that the respondent is not in employment with the petitioner ever since. It is further submitted that the impugned award has been delivered ex-parte.*

3. *Issue notice before admission to the respondent, returnable on 31/03/2015. Mr.Shahane, learned Advocate waives service for the respondent. Matter to appear in the urgent admission category."*

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

3. The petitioners submit that despite having engaged an Advocate to represent the cause of the petitioners before the Labour Court in the above stated reference proceedings, the matter went unattended. Written statement was not filed. The respondent/workman was not cross-examined. The petitioners did not lead evidence . All this has led to the passing of an ex-parte award dated 24/08/2010, which is impugned in this petition.

4. The learned AGP points out that the contention of the respondent that he was working as a Watchman on the Road-roller day and night from 11/01/1987 to 01/08/1989 continuously, is a false plea put forth by the respondent. He had never completed 240 days in continuous service of the petitioners. He has not placed any evidence before the Labour Court. Besides the statement of claim and the evidence by way of an affidavit, there was no material before the Labour Court which would have convinced the Court that the respondent was working continuously.

5. The learned AGP frankly submits that because the petitioners did not pay attention to the said proceedings, that the ex-parte award has been delivered. It is, therefore, submitted that this reference needs to be remitted to the Labour Court for fresh adjudication. The petitioners would file its written statement and participate in the proceedings diligently.

6. Mr.Shahane, learned Advocate has strenuously opposed the petition. He contends that the negligence and callousness shown by the petitioners towards proceedings before the Labour Court would not give the petitioners a right to assail an ex-parte award. The petitioners, on the one hand, have acted negligently and on the other

hand are forcing the respondent to suffer rigours of litigation for no fault on his part. The respondent is out of employment from 01/08/1989 and is still litigating. He has no source of earning.

7. He further states that because the petitioners did not appear before the Labour Court, it was left with no option but to consider the statement of claim filed by the respondent and the evidence led through an affidavit dated 24/08/2010. There was no cross-examination. The statement of the respondent went unchallenged and uncontroverted.

8. Mr. Shahane relies upon judgment of this court in the matter of Municipal Council, Sillod, through it's Chief Officer, Aurangabad Vs. Bhanudas Jayawanta Sonawane, Aurangabad 2014 (I) CLR 554 to support his contention that a remand in such circumstances needs to be accompanied with compensatory orders so as to balance the equities. He, therefore, prays for subsistence allowance in the event this Court is inclined to remit the matter to the Labour Court.

9. I have considered the submissions of the learned Advocates, the record from the petition paper book and the cited report. There is no doubt that the petitioners have acted negligently and have

shown laxity. It is stated that the petitioners have Advocates on its panel, who appear to have done nothing in this matter, to say the least. Notwithstanding these circumstances, the fact remains that besides the statement of claim and the affidavit of the respondent, there was no material placed before the Labour Court, which dealt with the matter in the absence of the petitioners. Reinstatement with continuity has been awarded to the respondent.

10. In the light of the above, I am convinced that the reference proceedings need to be remitted to the Labour Court, but by granting some compensation to the respondent to reduce the rigours of litigation, as the matter would result in turning back the clock by about 10 years.

11. The learned AGP has canvassed that the respondent claims to be orally terminated on 01/08/1989 and an industrial dispute is delayedly raised in 2004 after a passage of 15 years. This issue shall be dealt with by the Labour Court which may deprive the Employee of all monetary benefits for the lapse of 15 years in instituting the reference proceedings.

12. Considering the above, this petition is partly allowed. The

impugned judgment and award dated 24/08/2010 in Ref.(IDA) No.5/2004 is quashed and set aside. The reference is remitted to the Labour Court for fresh adjudication.

13. The litigating sides shall appear before the Labour Court at Aurangabad on 14/08/2015. The petitioners shall ensure that a written statement is to be filed before the Labour Court on or before 29/08/2015 and shall not seek an adjournment. The Labour Court shall decide the reference proceedings after enabling the parties to lead evidence afresh, as expeditiously as possible, and preferably on or before 29/02/2016.

14. The petitioners shall pay an amount of Rs.5,000/- (Rs. Five thousand only) per month to the respondent on or before the 10th day of each month. To begin with, the petitioners shall pay the said amount on 14/08/2015 and thereafter on or before the 10th day of each month from Sept. 2015 till the final disposal of the reference proceedings. The petitioners are at liberty to pay this amount directly to the respondent and obtain a receipt thereof.

15. The litigating sides shall not seek adjournments on trifling grounds and shall co-operate in the expeditious disposal of the

reference proceedings.

16. All the contentions of the litigating sides are kept open.

17. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)