

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5260 OF 2002

Executive Engineer,
Lower Terna Canal Division No.2,
Latur.

..Petitioner

Versus

Bachesaheb Eknath Kadam
Age 29 years, Occ. Labour,
R/o Manjri, Tq. Latur,
District Latur
C/o J.R.Potdar,
Secretary (INTC),
Godawari Niwas, Shivnagar,
Latur.

..Respondent

...
AGP for Petitioner : Smt. Kshirsagar Y.M.
Advocate for Respondent : Shri Venjane Tukaram M.
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WITH
WRIT PETITION NO.1236 OF 2003

Bachesaheb Eknath Kadam
Age 29 years, Occ. Labour,
R/o Manjri, Tq. Latur,
District Latur
C/o J.R.Potdar,
Secretary (INTC),
Godawari Niwas, Shivnagar,
Latur.

..Petitioner

Versus

Executive Engineer,
Lower Terna Canal Division No.2,
Latur.

..Respondent

...
Advocate for Petitioner : Shri Venjane Tukaram M.
AGP for Respondent : Smt. Kshirsagar Y.M.
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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 16, 2015

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ORAL JUDGMENT :-

1. The first petition was admitted by this Court on 13.1.2003 and the second petition was admitted on 1.4.2003. The first petition is preferred by the department and the second petition has been filed by the workman. As such, the parties shall be referred as the “department” and “workman” in this case.

2. The workman had preferred Reference (IDA) No.41 of 1996 after raising an Industrial Dispute under Section 2A under the Industrial Disputes Act, 1947 (“the Central Act”). The workman had worked from 1.7.1981 till 15.5.1982, which is a period of about 10 months and 15 days. It was alleged that there was an oral termination.

3. The department filed its written statement and has taken a stand that he was never appointed by the department at any time, much less on 1.7.1981. It was contended that since there was no appointment, there could not be any termination. Neither had the workman worked, nor does the issue of completion of 240 days in the continuous employment arise. Both the sides had led evidence in the matter. Reference was partly allowed, but backwages denied.

4. The workman is before this Court for seeking full backwages. The prayer set out in the petition, in clause (B) reads as under:-

“(B). Issue Writ of Mandamus or any other writ, order or directions in the like manner for quashing and setting aside the Award dated 9.9.2002 passed by the Labour Court Latur in Reference (I.D.A.) No. 41/1996 to the extent of denial of backwages to the petitioner.”

5. Shri Venjane has vehemently submitted that the termination having been set aside would necessarily mean grant of consequential relief of full backwages. He submits that because the employee was forcibly rendered unemployed, he needs to be compensated by payment of full backwages.

6. The learned AGP appearing on behalf of the department submits that the impugned judgment and award dated 9.9.2002, by which the reference has been allowed deserves to be quashed and set aside. There was no evidence of the workman having worked with the department. Besides an oral statement, there was no record pertaining to the workman working with the department since he was never inducted in employment.

7. It is further submitted that seven nominal muster rolls / registers (NMR) were produced by the department for the period 1.7.1981 upto July 1982, which did not reflect the name of the workman. Yet, the Labour Court has concluded that all the NM Rolls / Registers were not produced and hence an adverse inference will have to be drawn that the second party worked continuously from 1.7.1981 till 15.5.1982. The learned AGP,

therefore, prays that the impugned award be quashed and set aside.

8. Shri Venjane, learned Advocate, in the alternative, has made a prayer for quantified compensation for an amount of Rs.50,00,000/= (Rs.Fifty lakhs only/-). His salary per day was Rs.17/- only. He further makes a prayer that the matter may be remanded back to the Labour Court for fresh adjudication

9. Having considered the rival submissions and the record before the Court, it is not in dispute that even if it is presumed that the workman worked for ten months, he is out of employment for the last 33 years. By an order dated 12.1.2005, delivered by this Court, in Civil Application No.8900 of 2004 filed by the workman, he has been given the benefits of Section 17B of the Central Act. It is confirmed by Shri Venjane, on instructions from the workman present in the Court that ever since the passing of the order, the workman has been receiving last drawn wages under Section 17B.

10. The Apex Court has considered similar facts and has quantified compensation in lieu of reinstatement with continuity and backwages in the 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] and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].”

11. This Court in the matter of State of Maharashtra Vs. Santosh Gorakh Patil and another [2015 (3) Mh.L.J. 922], has considered almost an identical situation, wherein, the workman was drawing benefits under Section 17B of the Central Act, during the pendency of the Writ Petition. He had worked as a Watchman for three years from 1984 till 1987 and was drawing benefits of Section 17B from 2000 till the decision rendered by this Court on 20.2.2015.

12. In the light of the above, I am inclined to follow the law as laid down by the Apex Court in the above referred four cases and in the judgment delivered by this Court in the case of Santosh Gorakh Patil (supra).

13. Despite the fact that I find from the conclusions drawn by the Labour Court that there was no evidence before the Court even to prove the factum of employment and the existence of employer - employee relationship, I am not inclined to reopen the said issue, in the light of the fact that the workman is out of employment for 33 years and claims to have put in 10 months in employment.

14. As such, the Writ Petition, preferred by the workman, bearing

No.1236 of 2003 stands dismissed and Rule is discharged. To the extent of the Writ Petition preferred by the department bearing No. 5260 of 2002, same is allowed partly and the impugned award dated 9.9.2002 is modified and in lieu of reinstatement and continuity of service, the workman shall be entitled to compensation of Rs.50,000/- besides the benefit drawn by him under Section 17B of the Central Act, since 2005.

15. Rule is made partly absolute in the above terms. Needless to state, the payment under Section 17B shall not be payable from the date of passing of this judgment and the compensation of Rs.50,000/- shall be paid to the workman within the period of sixteen weeks from today.

(RAVINDRA V. GHUGE, J.)

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