

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3909 OF 2005
WITH
CIVIL APPLICATION NO.5560 OF 2015

GANPATI S/O RAJARAM ACHMARE,
AGE-55 YEARS, OCCU-NIL,
R/O SAVARGAON, TQ.MUKHED,
DIST.NANDED

PETITIONER

VERSUS

THE CHIEF EXECUTIVE OFFICER,
ZILLA PARISHAD, NANDED,
TQ. AND DIST. NANDED

RESPONDENT

Mr.A.S.Shelke, Advocate for the petitioner.
Mr.V.S.Panpatte, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/07/2015

ORAL JUDGMENT :

1. By order dated 05/12/2006, this petition was Admitted by observing as under :-

“1. Heard learned counsel for the petitioner. Record and proceedings are received and perused. The respondent has not filed reply affidavit. The counsel for the respondent is absent when the matter is called out. Copy of the judgment in previous litigation would show that the name of the petitioner is at Sr.No.34 in the list of workers and the period of his working is shown as 1.4.1982 to 30.9.1983 and amount payable to him is shown as Rs.4700.40/-. Thus, prima facie, it appears that the

petitioner was working for more than 240 days and could not be retrenched without following due procedure under Section 25F of the Industrial Disputes Act.

2. Hence the petition be admitted for final hearing. Interim relief in terms of prayer clause (D). Notice on interim relief returnable in four weeks.”

2. The civil application is filed for listing the writ petition for final hearing. With the consent of the parties, this petition itself was taken up for final hearing by allowing the civil application.

3. The contentions of the petitioner, who challenges the impugned judgment and award dated 02/12/2004, by which his Reference (IDA) No.3/1992, initiated for claiming reinstatement with continuity of service and full back wages w.e.f. 01/10/1983 was rejected, are as follows :-

- a. The petitioner worked from 01/10/1979 to 30/09/1983 in the continuous employment of the respondent.
- b. W.e.f. 01/10/1983, he was orally terminated.
- c. Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 are not followed.
- d. He was earning Rs.4.65/- per day when he joined on 01/10/1979 as a “watchman” at Sawargaon Wadi Tank.
- e. His continuous employment is proved by the judgment and order dated 10/01/1991 delivered by the Labour Court and

Competent Authority under the Payment of Wages Act in Application/PWA/No.13/1983.

- f. He was working on regular work of a "Watchman" which is of a perennial nature.
- g. The Labour Court lost sight of the fact that documents were not produced by the respondent, despite notice.
- h. A mere chart at Exh.C-8 was produced by the respondent.
- i. The Labour Court was not required to look beyond the judgment dated 10/01/1991.
- j. Instead of considering the conclusions in judgment dated 10/01/1991, the Labour Court has erroneously concluded that the said judgment is of no assistance to the petitioner, since it does not operate as res-judicata in the present case.
- k. The petitioner is 68 years old and therefore compensation be quantified in lieu of reinstatement, continuity and back wages.

4. Mr.Panpatte, learned Advocate appearing on behalf of the respondent / Department has vehemently opposed the petition. His contentions can be summarized in brief as follows :-

- a. The petitioner never worked continuously with the respondent.
- b. He was never engaged as a regular employee.
- c. Work was provided to him as and when it became available.
- d. He was working intermittently from 01/10/1979 to 1982.
- e. He was paid consolidated salary of Rs.100/- per month.
- f. He was terminated w.e.f. 01/03/1982.
- g. Chart was prepared by the respondent indicating the number of days worked and the salary paid.
- h. The Collector was not impleaded as a necessary respondent in

the reference proceedings.

- i. Onus and burden to prove continuous service lies on the Workman.
- j. The Labour Court has arrived at a finding on facts, which is not perverse.
- k. No perversity or error is pointed out by the petitioner in the impugned judgment.
- l. The judgment of the Labour Court delivered on 10/01/1991 is almost an ex-parte judgment and there is no need to follow the conclusions drawn by the Labour Court in the said judgment.
- m. The petitioner was under an obligation to prove completion of 240 days in the reference proceedings itself and could not have relied upon any judgment of any other Court in other proceedings
- n. The Labour Court has adduced proper reasons in support of its conclusions while rejecting the Reference.
- o. The portions indicated from paragraph No.1 and 2 of the affidavit - in - reply filed by the respondent deserves to be considered.
- p. The petition be dismissed with costs.

5. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

6. The respondent, in its affidavit in reply, has strenuously submitted that the petitioner never worked till 30/09/1983 and the judgment dated 10/01/1991 is of no assistance. The marked portion

set out in the affidavit in reply reads as under :-

“I say that with breaks from time to time in the services of the petitioner, the petitioner worked with the establishment of the answering respondent till February, 1982 and the services of the petitioner were terminated w.e.f. 1.3.1982 for non-availability of work. I say that during the tenure of work of petitioner he had never completed continuous service of 240 years (it should be 240 days) (Page No.52) in any one calendar year. Thus, the services of the petitioner came to end after end of the work on which the petitioner was provided work purely on temporary basis and on daily wages and therefore, the provisions of sections 25-F, 25-G and 25-N of the Industrial Disputes Act are not applicable to the said services of the petitioner and therefore, it was necessary to follow the procedure laid down under the said provisions. The petitioner had produced the evidence on record before the Reference Court in the nature of chart at Exh.C-8 showing therein the total working days of the petitioner from 1.10.1979, till the end of February, 1982 and the same has been duly proved. I further say that the petitioner also tried to show before the Reference Court that he worked with the answering respondent till 30/09/1983 by contending that his application (IDA) No.54/1982 for payment of his wages from 1.10.1982 to 3.9.1983 has been allowed by the Labour Court. However, the petitioner failed to prove that he had actually worked till 3.9.1983 by leading evidence and therefore, the Ld. Reference Court by recording reasoned findings held that petitioner worked only till the end of February, 1982 and in any of the year during

the said period petitioner did not complete continuous service of 240 days and therefore, rightly dismissed the said reference and therefore, the impugned Award passed by the Reference Court does not require interference of this Hon'ble High Court."

7. This Court had admitted this petition on the ground that a judgment in the previous litigation shows the petitioner at Sr.No.34 in the list of workers and the period of his working is shown as 01/04/1982 to 30/09/1983 and the amount payable to him is shown as Rs.4700.40/-. The observations of this Court in order dated 05/12/2006 are reproduced hereinabove.

8. It is not in dispute that the petitioner / workman is required to prove completion of 240 days in the continuous employment with the Department. It is also not in dispute that the notice for production of documents filed by the petitioner was allowed and the respondent, instead of producing the record, has produced a chart below Exh.C-8 to indicate the actual days on which the petitioner worked. It is also not in dispute that the written statement of the respondent at Exh.C-6 contains a statement that the petitioner worked from 01/10/1979 till 1982 as a "watchman" @ 100/- per month and was terminated on 01/03/1982.

9. In the light of the Law laid down, the workman has to establish continuous service. He relied upon the judgment of the Labour Court in Appl.(PWA) No.13/1983, by which the claim of the petitioner was considered by the Labour Court towards unpaid wages. By the said judgment dated 10/01/1991, an amount of Rs.4700.40/- was granted as an unpaid wages for a period of 18 months from 01/04/1982 to 30/09/1983. The said chart of unpaid wages is the final assessment made by the Labour Court itself.

10. The petitioner was earning Rs.4.65/- per day when he joined duties. It is the respondent's contention in the written statement that he was paid Rs.100/- p.m. in 1981. The Labour Court, by its judgment dated 10/01/1991, has concluded that the amount of Rs.4,700.40/- is payable as unpaid wages for 18 months. If the petitioner was earning Rs.100/- p.m. in 1981 as per the statement of the respondent, it could be presumed that the salary must have grown in 1983.

11. Two things are established by the judgment dated 10/01/1991. Firstly, that the amount of wages unpaid is for a period of 18 months and even if it is presumed that the salary has grown, the amount granted by the Labour Court sufficiently takes care of the monthly

salary of 18 months. Secondly, by this conclusion, the tenure of employment with the respondent is also proved.

12. It is not disputed that the judgment of the Labour Court dated 10/01/1991 has not been challenged by the respondent or set aside by any Superior Court, in as much as, the petitioner was paid the said amount as unpaid wages till 30/09/1983. It is also, therefore, established that the petitioner worked with the respondent till 30/09/1983. This fact could not have been brushed aside by the Labour Court while delivering the impugned Award under the spacious plea that “*this point is not res-judicata in the present case*”. Apparently, the Labour Court has mis-directed itself.

13. In the light of the above, it is evident that the petitioner has proved completion of 240 days with the respondent at least for the period of 01/04/1982 till 30/09/1983.

The Apex Court, in the following judgments has held that in cases involving short tenures of employment and long tenures of unemployment, compensation in lieu of reinstatement with continuity would be a reasonable relief.

“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 instant case, the petitioner can surely be said to have been put in 18 months of continuous service in the light of the judgment of the Labour Court dated 10/01/1991. From 01/10/1983, the petitioner is unemployed for the last about 32 years. Considering the tenure of employment proved to have been put in by the petitioner, I am inclined to quantify compensation of Rs.75,000/- (Rs.Seventy five thousand only) to be paid by the respondent to the petitioner in lieu of all the benefits incidental to the employment and non-employment of the petitioner.

16. This petition is, therefore, partly allowed. The impugned award dated 02/12/2004 in Ref.(IDA) No.3/1992 is quashed and set aside. Instead of reinstatement and continuity in service, for a short

duration put in by the petitioner, the respondent shall pay compensation of Rs.75,000/- within 16 (sixteen) weeks from today. Rule is made partly absolute in the above terms.

17. Civil application is allowed in terms of prayer clause "B" of the application and disposed of.

(RAVINDRA V. GHUGE, J.)