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

WRIT PETITION NO.7582 OF 2015
WITH
WRIT PETITION NO.7585 OF 2015
WITH
WRIT PETITION NO.7586 OF 2015

Executive Engineer,
PWD No.2,
Osmanabad.

...PETITIONER in all petitions.

-VERSUS-

Balasaheb Madhukar Shete,
Age : 45 years, Occ : Nil,
R/o Bhoom, Tal.Bhoom,
District : Osmanabad.

...Respondent in WP/7582/15

Gaffar Papamiya Saudagar,
Age : 45 years, Occ : Nil,
R/o Bhoom, Tal.Bhoom,
Dist.Osmanabad.

...Respondent in WP/7585/15

Ayub Mohhamadali Shaikh,
Age : 39 years, Occ : Nil,
R/o Bhoom, Tal.Bhoom,
Dist.Osmanabad.

...Respondent in WP/7586/15

....

Shri V.R.Mundada, Advocate for the Petitioner.

Shri K.A.Kadam, Advocate for the Respondents.

....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th August, 2015

Oral Judgment:

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

2 The parties were put to notice by the order dated 28.07.2015 that these matters would be heard finally today.

3 The Petitioner in these three petitions is the same Department of the Executive Engineer, PWD-2, Osmanabad. The individual Respondents in each of these petitions are identically situated. Since a common question of law is being considered, I have taken up these three petitions for hearing together.

4 The employee in the first petition claimed to have worked from 02.12.1985 till 21.09.1986 (Nine months). The employee in the second petition claimed to have worked from 20.12.1985 till 28.12.1986 (12 months). The employee in the third petition claimed to have worked from 01.03.1980 till 30.11.1981 (One Year and 08 months).

5 All these Respondents raised industrial disputes in 2006 after about 20 to 25 years, which were referred to the Labour Court and were

registered as Reference (IDA) Nos.2/2006, 6/2006 and 3/2006, respectively.

6 Shri Mundada, learned Advocate for the Petitioner, has contended that these three Respondents/ Employees were intermittently given the work as “Majdoors” at the rate of 16.30 paise per day. None of them had completed 240 days in continuous and uninterrupted service of the Petitioner. In the first two cases, the industrial disputes were raised after 20 years and in the third petition, it was raised after 25 years.

7 The Labour Court, by its award dated 03.07.2008 in the first case and by the award dated 04.07.2008 in the second and third case, has allowed the references without assigning any reasons and without drawing any conclusions, merely on the grounds that the Petitioner/ Employer did not file its Written Statement, the reference proceeded ex-parte and the Respondent/ Employees had filed their affidavits. Shri Mundada submits that no complaint or reference proceedings can be allowed merely on the basis of an affidavit.

8 Shri Mundada submits that subsequent events have occurred pursuant to the impugned Awards dated 03.07.2008 and 04.07.2008 delivered by the Labour Court. The miscellaneous applications were filed

by the Petitioner before the Labour Court for seeking recalling of the ex-parte awards. All those applications were rejected. The Petitioners, therefore, filed Writ Petition Nos.6410/2010, 6035/2010 and 6036/2010 before this Court. All the petitions were rejected on 23.08.2011 by concluding that the miscellaneous applications were rightly rejected by the Labour Court on 24.03.2009 as the Labour Court had become functus officio.

9 Shri Mundada further submits that the Petitioners preferred Special Leave Petition (Civil) Nos.13061, 13062, 13063 of 2011 before the Honourable Supreme Court. The Petitioners were initially directed to deposit an amount of Rs.17,71,466/- by the Apex Court. He hastens to add that all the Respondents herein have crossed the age of superannuation as these matters pertain to their claims of 1984-1985. He then submits that by the order dated 03.03.2014 all these three Special Leave Petitions were dismissed after the delay was condoned. The Apex Court passed the following order:-

*“Delay condoned.
The Special Leave Petitions are dismissed with
liberty to the Respondents to withdraw the amount
deposited by the Petitioner along with interest
thereon, if any.”*

10 Shri Mundada further submits that as a consequence of the

above reproduced order of the Apex Court, the Respondent in the first petition withdrew Rs.5,85,877/-, the Respondent in the second petition withdrew Rs.5,82,583/- and the Respondent in the third petition withdrew Rs.6,03,006/-. They stand fully compensated.

11 He further submits that these petitions deserve to be allowed by quashing and setting aside the impugned awards. He hastens to add that these awards were not subject matter of the litigation either before this Court or before the Apex Court. The proceedings narrated above which have culminated before the Apex Court, pertain to the litigation of the miscellaneous applications filed by the Petitioners on the ground that the Labour Court has become functus officio.

12 He, therefore, submits that the Apex Court has held in catena of judgments that where the employee may have worked for a short duration like 01 to 03 years and is unemployed for a long period as like 15 years to 25 years, compensation could be quantified in lieu of reinstatement with continuity of service and back-wages. Hence, he states that the Respondents have already been sufficiently compensated as they have received the above stated amounts.

13 Shri Kadam, learned Advocate appearing on behalf of the

three Respondents, confirms that these three Respondents have withdrawn their amounts as per the statement made by Shri Mundada. He submits that they have crossed the age of superannuation and hence, they should not be relegated back to the Labour Court to suffer further rigours of litigation. It would be an academic exercise since there would not be any order of reinstatement in relation to these three Respondents after having crossed the age of superannuation.

14 He, however, submits that the Petitioners have continued to drag the Respondents in litigation in these petitions. They had earlier taken the issue of rejection of their miscellaneous applications upto the Apex Court. Valuable time and money have been spent by the Respondents.

15 He further submits that the Petitioners themselves chose to remain absent before the Labour Court. There was no option for the Labour Court, but to proceed ex-parte. On account of non cooperation of the Petitioners, the Respondents/ Employees had to rely on their affidavits in lieu of oral evidence and hence, their references were answered in the affirmative. He, therefore, submits that these petitions be disposed of by quantifying the compensation to be paid to the Respondents in the light of the recent judgments of the Apex Court.

16 I have considered the submissions of the learned Advocates as are recorded herein above.

17 The issue as regards the Labour Court being functus officio is no longer res-integra. The litigation initiated by the Petitioners praying for setting aside the ex-parte awards has culminated in the Apex Court and the rejection of the miscellaneous applications on the ground of the Labour Court being functus officio, has not been interfered with by the Apex Court.

18 The two Respondents out of three are out of employment for about 30 years after having worked intermittently over a period of 12 calendar months. One Respondent is out of employment for the last 34 years. The industrial disputes have been raised after 20 years.

19 This Court, in the case of *Abbott Laboratories (India) Ltd. v/s Shri J.D. Jamdar, Member, Industrial Court and another* reported in **1995(3) Bom.C.R. 425**, has concluded that the Court should refrain from deciding a claim merely on an affidavit filed by the litigating sides. It is trite law that the onus and burden to prove completion of 240 days in continuous employment lies on the workman.

20 In the instant case, besides the statement of claim and besides an affidavit filed by the Respondents, there was no material before the Labour Court to conclude that the Respondents had worked for 240 days thereby, rendering them entitled for the protection of Section 25(B) and Section 25(F) of the Industrial Disputes Act, 1947. Without these issues being established, the removal of the Respondents from service would not amount to illegal retrenchment. The Labour Court has, in a single sentence, allowed the references by the impugned awards by observing in paragraph 4 as follows:-

“The IInd Party has adduced evidence by way of affidavit and his contention remained un-rebutted and unchallenged and therefore, considering the evidence of the IInd party on oath given by him by way of filing an affidavit, he deserves for the relief claimed by him and I proceed to passing the following Award.”

21 The Respondents were directed to be reinstated with back-wages and all service benefits. The back-wages have been granted, in a routine and perfunctory course. There was no evidence before the Labour Court as regards the evidence that the Respondents had attempted to seek employment elsewhere and failed to seek alternate employment and were without employment despite their efforts to secure the same. The back-wages in the absence of evidence could not have been granted by the

Labour Court in this fashion.

22 For all the above reasons, the impugned awards cannot be sustained, are perverse and erroneous and therefore, deserve to be quashed and set aside.

23 Considering the subsequent events, it is noteworthy that in a similar set of facts wherein the employees had worked for a short duration and were unemployed for a long duration, the Apex Court has laid down the ratio and quantified the compensation in (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, [2013 LLR 1009]; (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, [(2013) 5 SCC 136]; (c) *BSNL Vs. Man Singh*, [(2012) 1 SCC 558; and (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, [(2009) 15 SCC 327].

24 Relying upon the above referred judgments of the Apex Court, this Court in the matter of *State of Maharashtra v/s Santosh Gorakh Patil* reported in 2015(3) Mh.L.J. 922 has observed in paragraphs 9 to 13 as follows:-

“9. I, however, do not desire to go into this aspect since the respondent has been out of employment for the

past 28 years. He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009] and in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], I am convinced that the impugned judgment and award deserves to be partly set aside.

10. Paragraph No.20 of the judgment in the case of Mohanlal (supra) reads as under:-

“We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh : (2013) 5 SCC 136 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

11. Paragraph No.29 of the judgment in the case of Gitam Singh (supra) reads as under:-

“In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High

Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum.”

12. *It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos.4 and 5 in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558] as under:-*

“4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

13. *The Honourable Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], has held in paragraph No.14, as under:-*

“It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman

has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

25 In the light of the above, it would be purely an academic exercise to remit the references to the Labour Court. I am, therefore, not inclined to do so. The Awards are unsustainable and need to be set aside. The compensation could, therefore, be quantified in lieu of reinstatement and back-wages by following the ratio laid down by the Honourable Supreme Court in the above referred four cases.

26 I cannot overlook the fact that these three Respondents/ Employees have received the amounts of Rs.05,85,877/-, Rs.05,82,583/- and Rs.06,03,006/- since the Apex Court permitted them to withdraw the said amounts.

27 In the above referred four judgments of the Apex Court, the employees in those four cases were granted compensation in the range of Rs.50,000/- to Rs.01,00,000/- as was awarded by the Apex Court.

28 In the instant cases, all three Respondents have received the

amounts as referred above, which are many times more than the compensation granted by the Apex Court in the above referred four cases. I, therefore, do not find it appropriate to grant any more compensation to these Respondents since huge amounts have already been received by them under the orders of the Apex Court. Nominal costs for having participated in these proceedings in this Court could, therefore, be awarded.

29 In the light of the above, these three petitions are partly allowed. The impugned awards dated 03.07.2008 and 04.07.2008 delivered by the Labour Court in Reference (IDA) Nos.2/2006, 6/2006 and 3/2006 are set aside in the light of the compensation received by the Respondents as directed by the Apex Court.

30 Since the Respondents have participated in these proceedings, the Petitioner shall pay each of the Respondents an amount of Rs.7,500/- (Rupees Seven Thousand Five Hundred) within a period of EIGHT WEEKS from today.

31 These three petitions are partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)