

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4063 OF 2008

1. The State of Maharashtra
Though Deputy Forest Conservator
Nagar Aurangabad Road, Ahmednagar.

2. The Forest Guard, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

..Petitioners

Versus

1. Padu Mahadu Tambe (Died)
Shripad Dagadu Tambe.

2. Rakhamabai Padu Tambe
At post Katrad, Tq. Rahuri,
District Ahmednagar.

..Respondents

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Special Counsel for Petitioners : Shri Patil Umakant K.
a/w AGP - Smt. Shelke S.D.
Advocate for Respondent 1 : Deleted
Advocate for Respondent 2 : Shri Barde P.V.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 27, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. Both the learned Advocates have canvassed their submissions in extenso. Considering the fact that the employee has passed away in 2001 and since undisputedly his date of birth was 17.8.1927, I would not be adverting to the entire submissions of the learned Advocates in the light of the order that I intend to pass.

5. The contention of the petitioner is that the award dated 3.4.1995, delivered by the Labour Court, Ahmednagar in Reference IDA No.12 of 1992 was an ex parte award. In paragraph No.5 of the award, the Labour Court has concluded as under:-

“The matter is ex-parte. I have no reason to disbelieve whatever is stated by the second party workman in affidavit Exhibit UA. As second party is already allowed to resume duties with effect from 17.2.1993 and is working since then, no question of reinstatement arises.”

6. Shri Patil submits that the Labour Court granted continuity and full backwages from 19.12.1988 till 17.12.1993, his date of reinstatement. He, therefore, indicates from the affidavit-in-reply filed on 20.7.2015 that the total backwages payable to the respondent - widow of the deceased is Rs.22,212/-. He submits that the deceased was working on EGS and hence the payments have been calculated accordingly.

7. He further submits that the petitioners had moved a Misc.

Application (IDA) No. 3 of 1998 seeking the setting aside of the ex-parte award dated 3.4.1995. However, by judgment dated 14.7.2003, the application was rejected. Said order has not been challenged by the petitioners.

8. Shri Patil, therefore, submits that the impugned judgment of the Industrial Court dated 10.11.2006 in Complaint (ULP) No. 355 of 1996, filed by the deceased, which has been allowed, deserves to be set aside, since the deceased was working on EGS and the Industrial Court could not have granted benefits of permanency to the deceased.

9. Shri Barde, learned Advocate for the respondent / widow submits that the date of birth of the deceased was 17.8.1927. Age of retirement of the petitioners is 60 years. The widow is claiming benefits as have been granted by the impugned judgment of the Industrial Court. He, therefore, submits that an amount of Rs.5,00,000/- may be granted as a compensation amount and the respondent shall consider the said compensation as being to her complete satisfaction of all the reliefs granted by the Industrial Court.

10. I have gone through the record with the assistance of the learned Advocates. Shri Barde indicates that the deceased was not working on EGS and was in fact, working on regular basis with the petitioners, considering the details of his service having been supplied to the respondent widow by communication dated 18.11.2014, issued by the Forest Officer, Rahuri region. The deceased was, therefore, not working on EGS.

11. I find that the reference made before the Labour Court was against the termination of the deceased with effect from 19.12.1988. He had completed 60 years of age on 17.8.1987. On this ground alone, the Labour Court should have rejected the reference, considering the fact that the respondent could not continue in service with the petitioner, in any form, after 16.8.1987. However, the said award dated 3.4.1995, which has resulted in the reinstatement of the deceased on 17.12.1993 at the age of 67 years, and who was finally relieved on 16.8.1997 at the age of 70 years, has attained finality as the petitioners have not challenged the said award before this Court.

12. In the light of the above, it therefore, cannot be overlooked that the deceased worked with the petitioner till the age of 70 years, which is ten years beyond retirement. By the impugned judgment, dated 10.11.2006, the Industrial Court has also lost sight of this aspect and has concluded that the deceased deserves regularisation and benefits as per the award, including pension, gratuity and provident fund.

13. I find the above facts to be of a peculiar nature. The deceased stood retired on 16.8.1987 and yet has worked till 1997. Considering this situation, I find it appropriate and reasonable to quantify compensation to be paid to the respondent widow, by taking into account, the fact that the deceased stood retired on 16.8.1987 and has worked for ten years thereafter, till the age of 70 years and has earned his wages.

14. In the light of the above, I am quantifying an amount of Rs.75,000/- (Rs. Seven Five Thousand only/-) inclusive of gratuity and statutory benefits.

15. In the light of the above, this petition is partly allowed. The impugned judgment and order dated 10.11.2006 is quashed and set aside and is replaced by a direction to the petitioners to pay an amount of Rs.75,000/- (Rs. Seven Five Thousand only/-), in lieu of all benefits arising out of the employment and non-employment of the deceased. Said amount be paid to the respondent / widow within 12 weeks from today, failing which the same shall carry interest at the rate of 6% per annum from the date of this order till actual payment.

16. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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