

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4714 OF 2013

The State of Maharashtra,
Through the Deputy Conservator
of Forest, Nanded Forest Division,
Near Mahatma Gandhi Statute,
Nanded.

..Petitioner

Versus

Sitaram Maroti Wagadkar,
At post Wagad, Tq.Bhokar,
District Nanded.

..Respondent

...
GP for Petitioner : Shri Patil Umakant K.
Advocate for Respondent : Shri Shelke Avishkar S.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 21, 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. The petitioner is aggrieved by the judgment and award dated 19.1.2011 delivered by the Labour Court in Reference (IDA) No. 4 of 2007.

5. Contention is that the respondent was engaged under the Employment Guarantee Scheme (EGS) as and when work was available. It was denied that the respondent was continuously working in the plantations / nursery operated by the petitioner in their forest area. It was denied that the respondent worked from 15.7.1996 till 1.4.2005 as a Watchman in the forest nursery and plantation.

6. It is further contended that the EGS is not covered by the definition of “industry” under Section 2(j) of the Industrial Disputes Act and as such, the Labour Court should have cast an issue whether the petitioner is an “industry” or not. Said issue has not been cast by the Labour Court, though it concluded that the petitioner is an “industry”.

7. It is further submitted that the respondent could be continued on the same EGS by the petitioner and can be allotted work as and when it could be available. The seniority of the respondent could be considered for the said purpose and in the event he is entitled to the benefits of the letter dated 24.8.2004 from the Chief Conservator of Forests, Aurangabad (Exhibit U-9), letter dated 24.8.2004 (Exhibit U-10), Letter dated 21.8.2004 from Principal Chief Conservator of Forest, Nagpur (Exhibit U-11) and Letter dated 30.6.200 from Conservator of Forests, Nanded (Exhibit U-12), which were produced before the Labour Court, the said benefits could be made available.

8. Shri Shelke, learned Advocate appearing for the sole respondent has strenuously supported the impugned judgment. He submits that there was no record produced before the Labour Court to indicate that the respondent was working under EGS. He was one amongst more than 300 employees, who were engaged as watchmen or for other purposes in the several plantations and nurseries operated by the petitioner in their forest areas.

9. He further submits that he was orally terminated on 1.4.2005 and hence he preferred an industrial dispute, which resulted in Reference (IDA) No.4 of 2007 before the Labour Court at Jalna.

10. He points out that the petitioner prepared a list of daily wage labourers who had worked for 240 days in the last five years prior to termination and the said list was produced by the respondent below Exhibit U/13, which contains the name of the respondent. His entry in the said list is indicative of having continuously worked for 240 days. He submits that the respondent is still in employment. The petitioner contradicts this statement by stating that the respondent is not in employment from 25.3.2014.

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

12. The respondent has preferred an Industrial Dispute within two years of his oral termination. No evidence is produced before the Labour Court to indicate the exact number of days worked and the wages earned, besides Exhibit U/13 which is said to be a list prepared by the petitioner indicating those workmen who have worked for five years with the petitioner.

13. The Labour Court has directed reinstatement of the respondent with continuity, but without backwages. The petitioner is willing to offer the same work to the respondent, which he was performing prior to the institution of the reference.

14. Considering the fact situation as recorded above and the conclusions arrived at by the Labour Court, merely because a second view is possible, would not mean that the impugned award is rendered perverse and erroneous. The respondent has been granted reinstatement and the work performed by him earlier will therefore, have to be performed even in future.

15. In the light of the above, this petition is dismissed.

16. However, it be noted that the continuity granted to the respondent would be notional to the extent of maintaining his seniority amongst the workers, who are performing similar work. The petitioner shall offer him such work that he was performing earlier and in the event he is entitled for

the benefits under the Government Resolutions referred to herein above, the petitioner shall consider the claim of the respondent strictly by his seniority.

17. Rule is, therefore, discharged.

(RAVINDRA V. GHUGE, J.)

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