

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1934 OF 2002
WITH
CIVIL APPLICATION NO. 3728 OF 2015

Maharashtra Godavari Marathwada
Irrigation Development Corporation
through Executive Engineer,
Irrigation Department,
Osmanabad.

..Petitioner

Versus

Bibhishan Sugdev Chavan
C/o R.R.Yadav, Secretary,
Maharashtra Karmachari
Sanghatana, R/o Khanapur,
Tq. Paranda, Dist. Osmanabad.

..Respondent

...
Advocate for Petitioner : Smt. Bharaswadkar Kalpalata B.
Advocate for Respondent : Shri Kulkarni Shailendra S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 05, 2015
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ORAL JUDGMENT :-

1. While hearing the Civil Application, I have suggested to the learned Advocates to address the Court on the petition itself, since the dispute relates back to the termination of the respondent / employees in 1975. Smt. Bharaswadkar and Shri Kulkarni, learned Advocates have graciously addressed the Court on the pending petition, which was admitted by this Court by order dated 14.10.2002.

2. In the light of the order that I intend to pass, after hearing both the learned Advocates, I am adverting to the undisputed facts, which are as under:-

- (a) The respondent claimed to be working in between 1973 to 1975 as a Majoor on Employment Guarantee Scheme.
- (b) The respondent alleged termination on 1.2.1975.
- (c) The respondent had, therefore, worked for about two years.
- (d) The respondent is out of employment from 1.2.1975, which is almost a period of 40 years and 6 months.
- (e) 19 years post his termination, the respondent raised an Industrial Dispute which was registered as Reference (IDA) No. 120 of 1994, before the Labour Court, Solapur.
- (f) By award dated 27.7.1999, the Reference was allowed by the Labour Court and the petitioner was directed to reinstate the respondent in service with continuity. Backwages were denied.
- (g) The petitioner preferred Writ Petition No.760 of 2000 before this Court and by oral judgment dated 18.8.2001, the impugned award dated 27.7.1999 was quashed and set aside, with a direction to the Labour Court to decide the Reference afresh.
- (h) By the impugned award dated 18.12.2001, the Labour Court has allowed the Reference and directed the petitioner to reinstate the respondent with continuity, but without backwages.

3. The petitioner submits that the Labour Court had lost sight of the fact that the respondent was working on EGS as a Majoor on daily wages. He worked intermittently in between 1973 and 1975. He was not regularly selected or appointed. There cannot be an order of reinstatement with

continuity after the respondent raised an Industrial Dispute, almost 19 years post his termination.

4. Shri Kulkarni has vehemently supported the impugned award. He submits that the petitioner has fully participated in the Reference proceeding. The entire evidence before the Labour Court was rightly appreciated by the Court and the Reference was rightly allowed by adducing reasons. It is a finding on fact which cannot be criticized by the petitioner and no interference is called for. The respondent must have superannuated by now and hence, he deserves all service benefits from the date of the award till his superannuation.

5. I have considered the submissions of the learned Advocates and have noted the undisputed facts emerging from the record.

6. The Labour Court while deciding the Reference was called upon to deal with the claim of the respondent that he has completed 240 days in continuous service. It is trite law that the onus and burden lies on the employee to prove the factum of employment and uninterrupted service as is defined by Section 25B of the Industrial Disputes Act, 1947.

7. I find from the reasons and analysis of evidence in the impugned judgment that there was no material before the Labour Court to conclude completion of 240 days in continuous service with the petitioner. It was merely oral evidence of the rival sides that was before the Court.

8. The Labour Court has concluded in the impugned judgment as under:-

“ Taking into consideration the fact that there is oral evidence of both the sides which is nothing but word against word and under these circumstances and in the light of settled principle of law, by virtue of judgment passed by the Honourable High Courts, the words of the workers Section deserves to be believed. So far as certain facts are concerned, there is no dispute that the second party was working with the first party from 1.2.1983 to 1.2.1975 (It should read as 1.2.1973 to 1.2.1975). The second party having specially made a statement that he has concerned services by working for more than 240 days in each year, the first party having not at all refused the same by producing the documents in its custody or even by oral deposition, the statement of the second party deserves to be believed. ”

9. It is apparent from the above, that the Labour Court had no material before it to conclude that the respondent had worked continuously for 240 days. Since Section 25B of the ID Act is not satisfied, the contention of the respondent that Section 25F has been violated, is unsustainable. The impugned award, therefore, appears to be based more on the sympathy that the Labour Court has shown to the respondent than on the oral and documentary evidence before it.

10. Be that as it may, there is no possibility of granting any reinstatement to the respondent, who is out of employment for the past 40

years and has reached the age of superannuation. In similar circumstances, the Apex Court has concluded in the following four judgments that compensation in lieu of reinstatement with continuity would be more reasonable and pragmatic :-

“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 has relied upon the above referred four judgments while dealing with the case of State of Maharashtra Vs. Santosh Gorakh Patil and another [2015 (3) Mh. L.J. 922]. The observations of this Court in paragraph Nos. 9 to 13 are as under:-

“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 wages 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.”

12. As such, considering the fact that the respondent was awarded reinstatement with continuity after working only for about two years, having been out of employment for the last 40 years and still litigating against the petitioner by instituting Criminal (ULP) No. 17 of 2007 before the Labour Court and Complaint (ULP) No.74 of 2005 for seeking implementation of the impugned award, I deem it proper, in the peculiarity of the above facts, to grant compensation of Rs.1,00,000/- to the respondent which shall be paid by the petitioner within six weeks from today.

13. In the light of the above, this petition is partly allowed. the impugned award dated 18.12.2001 is modified with a direction to the petitioner to pay compensation of Rs.1,00,000/- (Re. One Lakh only/-) to the respondent within six weeks from today, failing which the said amount shall carry interest at the rate of 3% p.a. from the date of the impugned judgment dated 18.12.2001 till actual payment.

14. Rule is made partly absolute in the above terms.
15. Pending Civil Application, therefore, does not survive and is disposed off.

(RAVINDRA V. GHUGE, J.)

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