

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.709/2002
WITH
CIVIL APPLICATION NO. 1457 OF 2015

The Deputy Director,
Social Forestry Divison,
Osmanpura, Aurangabad.

..Petitioner

Versus

Smt. Vithabai Uttam Athve,
(Labour), at/post Pishor Shefipur,
Tq. Kannad, Dist. Aurangabad.

..Respondent

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AGP for Petitioner : Smt. Y.M.Kshirsagar
Advocate for Respondent : Shri Avishkar S.Shelke

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 03, 2015
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ORAL JUDGMENT :-

1. The respondent / employee has preferred the Civil Application under Section 17B of the Industrial Disputes Act, 1947, claiming wages during the pendency of the Writ Petition, preferred by the employer. The employee has succeeded in Reference (IDA) No. 61 of 1994 and by the judgment and award dated 18.10.1999, delivered by the Labour Court, the employee is granted reinstatement with continuity and backwages.

2. The learned Advocates for the employer / petitioner and the employee / respondent graciously consented for advancing their submissions on the petition itself which has been instituted on 6.11.2001

and has been admitted by order dated 24.2.2006. Rule has been expedited.

3. The learned AGP contends that the impugned award dated 18.10.1999 is delivered ex-parte. No opportunity of hearing was afforded to the petitioner. The testimony of the employee has gone unchallenged. The petitioner was unable to adduce any evidence. The impugned judgment and award, therefore, deserves to be set aside and the reference proceedings deserve to be remitted to the Labour Court for fresh adjudication.

4. Shri Shelke, learned Advocate for the employee submits that she was engaged as a Labour on daily wages at the rate of Rs.12/- per day at the Pishor Nursery, Taluka Kannad, District Aurangabad, operated by the petitioner. She has worked continuously from 1.9.1984 upto 23.9.1993. After having put in 9 years in service, she was orally terminated.

5. She raised an Industrial Dispute with promptitude and due to the non-cooperation of the petitioner, the matter was referred to the Labour Court and registered as Reference (IDA) No.61 of 1994.

6. She filed her statement of claim on 18.5.1995. Despite service of Court notice, the petitioner did not cause any appearance in the matter. "No Written Statement" order was passed on 21.1.1997 after the Labour Court waited for almost 20 months. Despite this position, the Labour Court

once again issued notice of hearing to the petitioner on 19.1.1998. In spite of service of Court notice, the petitioner did not appear in the proceedings.

7. The employee led evidence through an affidavit, which was uncontroverted. She had no option but to rely on her affidavit as there was utter non-cooperation by the employer. Her testimony has gone unchallenged. Consequentially, the impugned award was delivered ex parte.

8. Shri Shelke further submits that the petitioner cannot take advantage of its own wrongs. The negligence and callous attitude of the petitioner compelled the Labour Court to decide the Reference ex-parte. The employee is without a source of income for the last 22 years and is presently living in abject poverty. Section 17B protects the employee in the event of the employer preferring any proceeding before this Court or the Apex Court for challenging the judgment and award. The employee is about 55 years old today. The petitioner has not complied with the impugned award despite there being no interim relief granted by this Court.

9. Shri Shelke relies upon the judgment delivered by this Court in the matter of Municipal Council, Sillod Vs. Bhanudas Jayawanta Sonawane - Writ Petition No.3420 of 2013, dated 16.12.2013, wherein, this Court had considered the conduct of the employer and had imposed costs of Rs.1,00,000/- and while remitting the matter to the Labour Court has

directed the employer to pay Rs.5,000/- per month as wages during the pendency of the Reference proceeding.

10. He indicates paragraph Nos. 6 to 9 of the said judgment, which read as under:-

“6. The petitioner may be justified in stating that an issue of public employment is involved. However, the petitioner’s absence, laxity and non participation in the proceedings has led to the passing of an ex-parte Award directing the reinstatement of the respondent. Such apathy towards litigation needs to be deprecated. Government authorities need to be extremely careful in court matters and should fix responsibility on such officers whose negligence and apathy lands the department in such situations. Negligent officers need to be penalized for their laxity in such cases.

7. Though, in this fact situation, an opportunity of hearing needs to be given to the petitioner, the respondent employee needs to be compensated since the entire proceedings would be reversed by remanding the matter back to the Labour Court for enabling the petitioner to file its written statement, cross examine the respondent and lead its oral evidence. The hardships being suffered by the employee would therefore be aggravated and he would have to continue to suffer the rigours of litigation.

8. In the light of the above, ends of justice would be met by issuing the following directions :-

(a) The impugned award dtd. 18/01/2012 is quashed and set aside subject to the condition that the petitioner shall pay

an amount of Rs.1,00,000/- to the respondent within a period of eight weeks.

(b) Reference (I.D.A.) No.12 of 2001 shall stand relegated to the learned Labour Court, Aurangabad and be decided by giving the petitioner a reasonable opportunity in the matter of filing its written statement, cross examining the respondent employee, recording oral and documentary evidence.

(c) An amount of Rs.1,00,000/- be deposited by the petitioner on or before 14/02/2014 before the Labour Court at Aurangabad. Respondent can withdraw the said amount as compensation for the re-hearing of the reference.

(d) The Ref. (I.D.A.) No. 12 of 2001 would be restored and decided within a period of six months after the amount of Rs. 1,00,000/- is deposited in the Labour Court.

(e) The Labour Court shall make every endeavour to decide the reference within a period of six months, during which period the petitioner shall pay an amount of Rs.5,000/- per month to the respondent, by depositing it in the Court on or before the 10th day of each month from February 2014. The respondent all be at liberty to withdraw the said amount, every month.

(f) Condition of depositing Rs.1,00,000/- on or before 14/02/2014 shall be a condition precedent for restoration of Ref. I.D.A.No. 12/2001. If the same is not made, this order shall stand recalled and the award dated 18/01/2012 shall continue to be in operation.

(g) *Both the parties shall appear before the Labour Court, Aurangabad on 17/02/2014 and extend co-operation to the Court without seeking unnecessary adjournments.*

9. *With these directions, petition is partly allowed. Rule is made absolute in terms of the above directions. ”*

11. I have heard the learned AGP at length. It is evident that despite the Court service of the notice on the petitioner, on two occasions, the petitioner was unable to emerge from its deep slumber. The petitioner appears to have voluntarily neglected the Court proceedings. After the award was delivered, it took the petitioner two years to approach this Court. Despite no relief at the interim stage having been granted by this Court, the impugned award has neither been implemented nor is the employee being paid last drawn wages under Section 17B.

12. This Court has dealt with the nature of duties in a Nursery in the case of State of Maharashtra Vs. Parvatibai Punaji Salave [1993 III LLJ 391 = 1991 II CLR 474]. Paragraph Nos.2 and 7 of the said judgment read thus:-

" 2. The first respondent in all the three writ petitions were working in the Central Fruit Nursery of the petitioners at Puntambe in Ahmednagar District continuously for a period of 13 years, 10 years and 8 years, respectively. Their duties were to raise seedlings, grafting to various trees bearing fruits and sell the same to the cultivators. This work belonging to the petitioners was going on

continuously for 30 years and more. For the purpose of the said nursery activity, the petitioners had in their possession irrigated land. They used to engage labourers on daily wage basis for operating oil engines, watering plants, cultivating the land, watching and guarding plants, etc. and the first respondents were engaged as labourers on daily wages and they had continuously worked there for 13 years, 10 years and 8 years, respectively, as stated above. Despite the first respondents so working for such a long time they were not made permanent and, therefore, they filed unfair labour practice complaints in the Industrial Court at Pune charging the petitioners for committing unfair labour practice covered by Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the MRTU & PULP Act').

"7. 7. I find no substance in both the arguments of Mr. Kerkar for the simple reason that in the type of activity which the petitioners were engaged in, they had engaged the first respondents as labourers for various operations connected with the fruit nursery activity of the petitioners for continuous period of 13, 10 and 8 years. The nature of the work carried on by the first respondents were permanent, although they were working on daily wage basis. The argument of Mr. Kerkar that the Industrial Court had no jurisdiction to entertain and try the unfair labour practice complaints as the first respondents were not workmen has to be stated only to be rejected, inasmuch as it was the contention of the petitioners that the first respondents were casual workmen. And it is important to note that a casual workman does not cease to be a workman. I, therefore, find no error apparent on the face of the record in the impugned orders passed by the learned Member of the Industrial Court in holding that the first respondents were doing the work of permanent nature and they were the daily rated workmen

employed by the petitioners. Although the first respondents wanted to be in the category of permanent workmen effective from the date on which they had completed one year of continuous service, the learned Trial Judge made them permanent with effect from August 1, 1982 about which no grievance was made by the first respondents."

13. I find that it would be a travesty of justice to remand the proceedings to the Labour Court, so as to enable a sleeping litigant to wake up from deep slumber and make the employee suffer rigours of litigation by reversing the clock by 21 years. The employee is about 55 years and the age of retirement is 58 years.

14. In the light of the fact situation as above, I am not inclined to accept the request of the petitioner for remitting the Reference proceedings to the Labour Court. Taking into account the fact that the respondent had put in 9 years in employment, has suffered 22 years of unemployment and the scope of Section 17B, that I find it proper to conclude this matter in the light of the ratio laid down by the Apex Court in quantifying compensation in lieu of reinstatement, continuity of service and backwages, in the following judgments:-

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. The last drawn wage of the employee was Rs.12/- per day. It is indicated that today the daily wage is in between Rs. 150/- and 200/-. Considering the ratio laid down by the Apex Court in the above referred judgments, I find it appropriate to direct the petitioner to pay an amount of Rs.2,50,000/- to the employee by modifying the impugned judgment.

16. In the result, this petition is partly allowed. The impugned award, dated 18.10.1999 in Reference (IDA) No.61 of 1994 is modified and the respondent shall stand entitled for an amount of Rs.2,50,000/- which the petitioner shall pay within a period of twelve weeks from today, failing which an interest at the rate of 6% per annum shall be payable on the said amount of compensation. Consequentially, the Reference proceedings are disposed off in these terms.

17. Rule is made partly absolute.

18. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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