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

WRIT PETITION NO. 3571 OF 2014

Bhagwat s/o Saluji Tangade,
Age : 47 years, Occ : Nil,
R/o At.Post.Ghatsawali,
Tq. & Dist.Beed.

....PETITIONER

-VERSUS-

The Executive Engineer,
Public Works Division,
Beed, Dist.Beed.

....RESPONDENT

.....

Mr.Shahane Pradeep L. a/w Mr.Parag Shahane, Advocate for the Petitioner.
Mrs.Y.M.Kshirsagar, AGP, for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th July, 2015

Oral Judgment:

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

2 The Petitioner is aggrieved by the judgment and award dated
28.09.2012 delivered by the Labour Court by which Reference (IDA)
No.4/2004 has been dismissed.

3 Mr.Shahane, learned Advocate for the Petitioner, submits that the Petitioner had joined the Respondent/ Employer as a daily-wager on 05.12.1980. He was orally terminated on 21.10.1989 after having put in almost 08 years and 11 months in continuous employment with the Respondent/ Employer.

4 The Petitioner raised an industrial dispute after about 14 years from the date of his alleged oral termination which was referred to the Labour Court and registered as Reference (IDA) No.4/2004.

5 The Petitioner points out that the application Exhibit U/7 was filed by the Petitioner seeking directions to the Respondent/ Employer to produce certain documents which would indicate that the Petitioner had worked with the Respondent from 05.12.1980 upto 20.10.1989. Despite opportunities, the Respondent/ Employer did not file it's Say to Exhibit U/7 which was allowed by the order dated 27.08.2008 directing the Respondent to produce the documents "if available".

6 Meanwhile, the Petitioner moved an application under the Right to Information Act, 2005 praying for documents and information. His application dated 01.07.2008 was replied to by the Information

Officer of the Public Works Department by his communication dated 14.08.2008. With regard to the attendance register from 05.12.1980 to 20.10.1989, it was answered that the documents are required to be preserved only to the extent of five years and the relevant record pertaining to the said period has been filed in the Labour Court, Aurangabad.

7 Mr.Shahane, therefore, submits that this is factually untrue and no such document was filed before the Labour Court. He further submits that there is no denial by the Respondent vide it's communication dated 14.08.2008 as regards the document at Sr.No.1 mentioned in the application dated 01.07.2008 filed under the Right to Information Act, 2005. He submits that the Petitioner exerted to his maximum possible extent, but his efforts were frustrated by the Respondent who did not produce the said documents.

8 Mr.Shahane then submits that the Petitioner does not have the exclusive custody of the documents which are retained by the Respondent/ Employer. The burden cast upon the Petitioner was discharged and therefore, the onus has shifted to the Respondent/ Employer. The documents were not filed deliberately so as to frustrate the claim of the Petitioner. It is in these circumstances that the Reference was

erroneously rejected.

9 Learned AGP has strenuously supported the impugned judgment and award. She submits that the Petitioner was never appointed as a daily-wager. There was no Employer-Employee relationship between the two. The Respondent filed its say which clearly indicates that false claim has been put forth by the Petitioner. The burden of proving completion of 240 days in continuous service of the Respondent/ Employer lies on the Petitioner/ Workman who makes the claim. The said burden has not been discharged by the Petitioner and hence, the Reference has been rightly rejected.

10 The Respondent filed its Say at Exhibit C/3 denying the relationship with the Petitioner. It was contended that the Petitioner was never employed as daily-wager. As there was no employment at all, the issue of his termination and compliance of Section 25(F), (G) and (H) of the Industrial Disputes Act, 1947 does not arise. It was also stated that the claim of the Petitioner/ Employee is false and bogus. It was also stated that after 1990 no daily-wager is being appointed.

11 It is evident that the Petitioner could not produce any evidence before the Labour Court to prove the purported employment of

almost 08 years and 11 months. In the absence of any evidence to prove continuous employment, the Reference was rejected.

12 The Respondent/ Employer did not produce the documents as ordered by the Labour Court notwithstanding the fact that the direction to produce the documents was conditional. The reply dated 14.08.2008 at Sr.No.1 in response to the application dated 01.07.2008 filed by the Petitioner under the Right to Information Act, 2005, does not indicate that the said documents are not at all available with the Respondent/ Employer. In fact it is stated in the said reply that the documents pertaining to the period 05.12.1980 to 20.10.1989 were deposited in the Labour Court. Factually these documents were not deposited. It was a false statement.

13 Having gone through the impugned order, it is evident that the claim of the Petitioner has been rejected on the ground that no documents were produced before the Labour Court. The Labour Court lost sight of its order dated 27.08.2008 as well as the fact that the Respondent/ Employer had falsely stated in its reply dated 14.08.2008 that the documents were filed in the Labour Court. This aspect appears to have been lost sight by the Labour Court. It is only in the light of these peculiar circumstances that I am inclined to remit back the Reference to

the Labour Court.

14 The conclusions drawn by the Labour Court in paragraph 21 of its judgment that the Employer is burdened with the record of documents and the Employer may not place the documents before the Labour Court since the claim was raised after 14 years, were unwarranted. I, therefore, find it appropriate to give an opportunity to the Petitioner as well as the Respondent so as to establish their respective contentions.

15 In the light of the above, the impugned award dated 28.09.2012 is quashed and set aside. Reference (IDA) No.4/2004 is remitted back to the Labour Court, Aurangabad. The Respondent/Employer is at liberty to produce the documents before the Labour Court in the light of its reply dated 14.08.2008 in response to the RTI application of the Petitioner and lead evidence to support its contentions set out in its say below Exhibit C/3.

16 The litigating sides shall appear before the Labour Court on 27.08.2015 and separate notices need not be issued by the Labour Court.

17 Reference (IDA) No.4/2004 shall be decided as expeditiously as possible and preferably on or before 02.01.2016.

18 The Labour Court shall note that the said reference shall be decided on its own merits without being influenced by any observations set out in this order or in the impugned judgment dated 28.09.2012 which is now set aside.

19 The Writ Petition is partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)