

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9834 OF 2012

Sukhdev Mohanaji Ghorpade
Age 68 years, Occ. Nil,
R/oat Mathani, Post. Kawadgaon,
Taluka Nagar, Dist. Ahmednagar.

..Petitioner

Versus

Deputy Forest Conservator,
Nagar-Aurangabad Road,
Ahmednagar.

..Respondent

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Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondents 1 to 3 : Shri Patil Umakant K.
h/f Shri Korde D.R., AGP
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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 13, 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. It is undisputed that the respondent / State was before this Court in Writ Petition No.1104 of 2006, challenging the judgment and award dated 30.10.1999, by which, Reference (IDA) No. 72 of 1996 was allowed and the

respondent - employer was directed to reinstate the petitioner with continuity of service and full backwages from the date of termination i.e. 1.7.1987.

5. The concluding paragraph of the above referred judgment dated 15.4.2008 is relevant and the same reads as under:-

“10. The impugned award is modified and it is directed that the Petitioner shall pay arrears of salary to the respondent from 1.12.1999 till the date on which he was actually permitted to be reinstated. It is made clear that the aforesaid amount shall be paid to the respondent within a period of three months from today.

Rule is disposed of on the aforesaid terms with no order as to costs.”

6. Since the arrears of salary were directed to be paid to the employee from 1.12.1999 till the date on which he was reinstated, the petitioner preferred Application (IDA) No.421 of 2009, seeking recovery of money from the employer under Section 33-C(2) of the Industrial Disputes Act, 1947. By the impugned judgment and order dated 25.6.2012, the said application has been rejected solely on the ground that the rates of wages were decided by the Government and revised from time to time. Same have been paid. The Labour Court would not decide whether the Minimum Wages Act is applicable to the employees and the employer.

7. Section 7 (vii) of the Maharashtra Employment Guarantee Act, 1977 reads as under:-

“(vii) The wages shall be paid according to the schedule of rates, which shall be fixed by the State Government for different types of works from time to time. The schedule of rates shall be so fixed that a person working diligently for 7 hours a day would normally get a total wage equal to the minimum wage for agricultural labourer for the relevant zone fixed by the State Government, from time to time.”

8. Contention of the petitioner is that Section 7(vii) squarely applies to the respondent and the wages per day payable to the petitioner cannot be less than the minimum wages prescribed. It is submitted that the notification dated 2.7.2003, bearing No. MWA-5293-7588-LAB-7 subsequently issued under the Minimum Wages Act, 1948 mandates payment of minimum wages to the petitioner under entry at Sr. No.2(48) of the said Notification.

9. Though Shri Patil, learned Advocate for the respondent establishment has strenuously supported the impugned judgment and prayed for the dismissal of this petition, I do not find that the Labour Court has dealt with the Application (IDA) No.421 of 2009 considering Section 7(vii) of the Act and the Notification dated 2.7.2003, referred above.

10. The application filed by the petitioner under Section 33-C(2) requires calculation of unpaid amounts. It is settled law that calculations inclusive of arithmetically calculations can be resorted to by the Labour Court under Section 33-C(2).

11. It is noteworthy and the Labour Court shall also note that Section 7 of the MEG Act, 1977 has been repealed in 2014. However, the said Section 7 was in force as on date of the cause of action set out in Application (IDA) No. 421 of 2009. The Labour Court shall, therefore, consider the said provisions in the light of the directions of this Court in this judgment.

12. In the light of the above, the impugned judgment dated 25.6.2012 is quashed and set aside. Application (IDA) No. 421 of 2009 is remitted back to the Labour Court, Ahmednagar for deciding the same after concluding whether the petitioner / employee is entitled to the benefits of Section 7(vii) of the MEG Act.

13. Needless to state, this Court has not dealt with the matter on its merits and has not arrived at a conclusion that the petitioner would be entitled to the wages as per the minimum rates prescribed. Hence the Labour Court shall decide the said issue and recalculate the unpaid amounts after considering the rival contentions of the litigating sides, on their own merits.

14. Considering the request of the learned Advocates for the respective parties, the litigating sides shall appear before the Labour Court, Ahmednagar on 5.11.2015. Formal notices need not be issued by the Labour Court.

15. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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