

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.223 OF 2006

The Deputy Director,
Social Forestry Division
Osmanpura,
Aurangabad

Petitioner

versus

Shankar Shenfad Sonawane
age: 53 years,
at post Undangaon
Tq. Sillod, Dist. Aurangabad

Respondent

Mr. K.N. Lokhande, AGP for petitioner
Mr.A.S. Shelke advocate for the respondent

CORAM : **RAVINDRA V. GHUGE, J**

Date : 15th OCTOBER, 2015.

ORAL JUDGMENT

1 This petition was admitted by order dated 19.10.2007.

2 The petitioner department is aggrieved by the Judgment & Award dated 19.11.2004 delivered by the Labour Court, Aurangabad in Reference IDA No.28/1991, by which the respondent was granted reinstatement with continuity of service on the post of watchman. He was deprived of the back wages.

3 Grievance of the petitioner is that, the respondent employee was working intermittently as a watchman from 17.5.1985 at

Undangaon ropwan. Thereafter, he was working at Paithan within Subdivision Gevrai. He was drawing Rs.12/- per day as wages. Since the work was not available, he was disengaged from 11.5.1990.

4 The respondent raised an industrial dispute, which was referred to the Labour Court and registered as Reference IDA No. 28/1991. He had averred that, he was working from 17.5.1985 till 11.5.1990 in the continuous and uninterrupted service of the petitioner as a watchman. Under oral orders, he was terminated from service by the Plantation Officer at the Paithan nursery. Sections 25-F and G of the Industrial Disputes Act, 1947 (ID Act) were not complied with, while dispensing with his services.

5 By the Judgment & Award dated 19.11.2004, impugned in this petition, the Reference was partly allowed. The learned AGP therefore, submits that, without there being any evidence before the Labour Court to show that, the respondent was working continuously and had completed 240 days in continuous employment, the Labour Court concluded that, the termination of the respondent was an act of illegal retrenchment. The principle of '*last come, first go*' was not followed and juniors were retained in service. This has been construed to be violation of section 25-F & G and hence, reinstatement was ordered with continuity of service by the impugned Award.

6 He, therefore, submits that, it was only under the order dated 19.10.2007 of this Court that, the respondent was offered work as and when it was available. He refused to work and kept himself away from work. Learned AGP submits that, the impugned Award is rendered perverse, since the conclusions drawn by the Labour Court are not sustainable and are not based on oral and documentary evidence adduced before the Labour Court.

7 As against this, learned advocate appearing on behalf of the sole respondent submits that, it was established before the Labour Court, on the basis of documents that, the respondent was working continuously for at least five years from 17.5.1985 till 11.5.1990.

8 Under the orders of this Court dated 19.10.2007, the petitioner attempted to post the respondent on the Maharashtra Rural Employment Guarantee scheme and it was a different area and establishment altogether. He was working as a watchman with the petitioner and as such should not have been shifted to Employment Guarantee Scheme. He, therefore, protested on this count and the petitioner declined to give him work thereafter.

9 It is in these circumstances that, the order dated 7.2.2014 was passed by this Court granting the benefits under section 17-B of the ID Act w.e.f. January, 2011. Since the petitioners have not

fully complied with the said order, the respondent has filed Contempt Petition No.58/2015.

10 Mr. A.S.Shelke further submits that, after 2010, he has been out of employment and is surviving only on the amounts which the petitioner was directed to deposit in this Court by the order of this Court dated 7.2.2014. He further submits that this petition deserves to be dismissed.

11 I have considered the submissions of the learned Advocates and have gone through the record as is available.

12 The fact remains that, the respondent could establish his employment before the Labour Court for five years. After 11.5.1990, he can be said to be out of employment till 2007 when this petition was admitted by this Court on 19.10.2007. Even thereafter, he has worked on a very few occasions which cannot tantamount to his being in continuous employment.

13 The fact situation, therefore, indicates that the respondent had worked for five years and is out of employment for the last 25 years. Considering his last drawn wages @ Rs.12/- per day and the order of this Court, granting him benefits of Section 17-B w.e.f. January, 2011, the petitioner has deposited an amount of Rs.43,020/- on 29.9.2015, which seems to be an outcome of lodging

of the contempt petition by respondent on 23.10.2014 in which notice was issued on 10.2.2015.

14 The Apex Court has considered a some-what similar situation of small tenure of employment and long span of unemployment in the following four cases:-

- 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
- 4 *Jagbir Singh vs. Haryana State Agriculture Marketing Board* (2009) 15 SCC 327.

15 In the above referred four judgments, the Apex Court concluded that it would be appropriate to quantify compensation in lieu of reinstatement and continuity of service, as in such cases, it would sound more practical and pragmatic. The Apex Court held that, in such situation, reinstatement should be avoided after a long span of unemployment.

16 Considering the ratio laid down by the Apex Court, it appears that, compensation has been quantified at Rs.30,000/- per completed year of service. I find the instant case to be fit for being covered by the said ratio laid down by the Apex Court.

17 As such, this petition is partly allowed. The Judgment & Award impugned dated 19.11.2004 is modified by directing the petitioner to pay an amount of Rs.1,50,000/- keeping in view that, the respondent had worked for five years, as compensation inclusive of the benefits of Section 17-B of the ID Act. Respondent would be at liberty to withdraw the amount of Rs.43,020/- deposited in this Court on 29.9.2015. Therefore, an amount of Rs.1,07,000/- shall be paid by the petitioner to the sole respondent, within a period of 12 weeks from today, failing which the said amount shall carry interest @ 3% per annum from the date of the impugned Award. The respondent shall, therefore, withdraw the amount of Rs.43,020/- deposited in this Court, without any condition, but by producing tangible identity proof.

18 Rule is, therefore, made partly absolute, in the above terms.

19 Since the benefits of Section 17-B have been included in the compensation as awarded herein above, by the consent of the petitioner, Contempt Petition No.58/15 is disposed of.

(RAVINDRA V. GHUGE, J)