

kps

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

WRIT PETITION NO. 6676 OF 2014
WITH
CIVIL APPLICATION NO.5175 OF 2015
IN
WRIT PETITION NO.6676 OF 2014

- 1 In charge, Narmada Scheme,
Seismograph Station, Sawalda,
Taluka Shahada, District Nandurbar.
- 2 Executive Engineer,
Sardar Sarovar Nigam Private Limited,
Narmada Project Dam Division No.2,
Geological Unit-D,
New Administrative Building,
Block-B, Second Floor,
Kevadia Colony, Gujrat.

...PETITIONERS

-VERSUS-

Deelipsing Onkarsing Jadhav,
Age : 42 years, Occ : Service,
R/o Sawalda, Taluka : Shahada,
District Nandurbard.

...RESPONDENT

....

Mr.N.B.Suryawanshi, Advocate for the Petitioners.

Mr.T.K.Prabhakaran h/f Mr.A.V.Mundada and Mr.Shrikant Patil, Advocates
for the Respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th July, 2015

Oral Judgment:

1 Leave to correct the first name of the Respondent. Correction be carried out forthwith.

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

3 The Petitioners seek to challenge the impugned judgment and order dated 06.09.2013 delivered by the Industrial Court, Dhule in Complaint (ULP) No.24/2008 by which the complaint filed by the Respondent seeking benefits of permanency has been allowed.

4 Shri Suryawanshi, learned Advocate appearing on behalf of the Petitioners, has strenuously criticized the impugned judgment. His contention is that Petitioner No.2 is the limb of the State of Gujarat having it's seismograph station at Sawalda, Taluka Shahada, District Nandurbar. The Respondent/ workman was appointed as a "Chowkidar" on daily-wages w.e.f. 01.01.1990 to guard the installation at the seismograph station, Sawalda.

5 He further submits that the Respondent was terminated in

1996 and he had preferred Complaint (ULP) No.123/1996 alleging oral termination. It is not in dispute that by the compromise purshis dated 04.05.1999 jointly filed by the Respondent/ workman and the Petitioners/ establishment before the Labour Court, the termination of the Respondent was recalled and the Petitioners agreed to reinstate the workman on the post of “Chowkidar” at Sawalda with continuity of service.

6 Shri Suryawanshi further submits that after reinstating the Respondent/workman on 05.05.1999 by the order of the Court, he continued in employment of the Petitioners at the same place. He preferred Complaint (ULP) No.24/2008 alleging Unfair Labour Practices (ULP) against the Petitioners and sought permanency with benefits incidental and consequential thereto. It is this complaint which has been allowed by the impugned judgment and order dated 06.09.2013.

7 Shri Suryawanshi submits that the written SAY was placed on record before the Industrial Court stating therein that Narmada Project Geological Division has been abolished by the Government of Gujarat. The Industrial Court cannot exercise jurisdiction in the matter merely on the ground that the Respondent is deployed at the installation at Sawalda. He was working on daily-wages and his name was entered on the nominal muster roll. No right is created in the Respondent for seeking

regularization or benefits incidental and consequential thereto.

8 Shri Suryawanshi further points out the cross-examination of the Respondent wherein, he has stated unequivocally that he was ready and willing to work with the Establishment as per the terms and conditions of the compromise dated 04.05.1999. He has resiled from paragraph 2 of the compromise purshis. The Industrial Court has deprived him of the said benefits. He has falsely stated that he was the only Chowkidar guarding the installation at Sawalda and that there are no other Chowkidars at the said place. He has conveniently pretended about having no knowledge of two Chowkidars, namely, B.B.Basava and A.PTadvi.

9 Shri Suryawanshi submits that the Respondent was orally appointed and cannot be said to have completed 240 days in the continuous and uninterrupted service of the Petitioners. His engagement on daily-wages amounts to a back door entry. He is not entitled to regularization in the light of the judgment of the Apex Court in the case of *Secretary, State of Karnataka v/s Umadevi* reported at **AIR 2006 SC 1806 : 2006(4) SCC 1**.

10 Shri Suryawanshi has then drawn my attention to the reasons

assigned by the Industrial Court while delivering the impugned judgment. He submits that on skeletal evidence, the Industrial Court has given benefits of regularization to the Respondent. The Respondent can voice his grievance before the Government of Gujarat or the Labour machinery within the State of Gujarat. He adds that the Respondent has not challenged the impugned judgment to the extent of denial of benefits like bonus, leave encashment, increment, etc. by the Industrial Court in paragraph 11 of the impugned judgment. He, therefore, prays for quashing and setting aside the impugned judgment and seeks the dismissal of the complaint.

11 Shri Prabhakaran, learned Advocate appearing for the Respondent, states that the impugned judgment has not been challenged by the Respondent till this date. He, however, refutes the submission of the Petitioners.

12 Shri Prabhakaran further submits that the engagement of the Respondent as Chowkidar cannot be denied by the Petitioners for the fact that no evidence has been brought on record to indicate that besides the Respondent, there were other Chowkidars who were deployed. Notwithstanding the said situation, he places heavy reliance on the purshis Exhibit U/C-1 which was filed before the Labour Court at Dhule in

Complaint (ULP) No.123/1996. He submits that the Petitioners had subjected themselves to the jurisdiction of the Labour Court at Dhule when the Respondent questioned his termination in Complaint (ULP) No.123/1996. Moreover, the Petitioners entered into a joint purshis dated 04.05.1999 Exhibit U/C-1, by which the cause of action was settled amongst the litigating sides and the Petitioners agreed to reinstate the Respondent/ Workman with immediate effect on the post of Chowkidar with continuity of service. He, therefore, submits that the Petitioners now cannot approbate and reprobate by raising a jurisdictional issue before this Court.

13 Shri Prabhakaran submits that there was nothing before the Industrial Court to indicate that the workman was working as Chowkidar intermittently or as and when allotted with the said duties. Sufficient documents were produced before the Industrial Court to indicate that the workman was continuously working with the Petitioners. So also, the Petitioners/ Employer cannot resile from the fact that they had reinstated the workman on 05.05.1999 and since then, he has been performing his duties as Chowkidar. He, therefore, prays that the petition be dismissed with costs.

14 I have considered the submissions of the learned Advocates.

15 It is undisputed that the joint purshis dated 04.05.1999 restored the workman as Chowkidar with the Petitioner/ Establishment with continuity of service. The text of the joint purshis placed before the Labour Court in Complaint (ULP) No.123/1996 reads thus:-

“Complainant and respondent submit that they have compromised in the proceeding as per following terms:-

- 1. Respondent agrees also reinstate the complainant immediate on the post of Chaukidar at Shahada with continuity of service.*
 - 2. Complainant will not be entitled for any benefits if bonus, leave, increment and other consequential financial benefits except payments made to him vide order of the Court dtd. 06.03.1998.*
- The above terms are agreeable to truth.”*

16 It is evident that continuity of service was granted to the workman which indicates that he has worked continuously prior to his reinstatement and subsequent thereto, in the light of absence of any evidence to indicate the otherwise. Continuity of service having been granted, rendered the workman in the continuous employment of the Petitioners. Paragraph 2 of the joint purshis was a voluntary declaration made by the workman that he would not be entitled for any benefits of bonus, leave encashment and other consequential financial benefits except payments made to him by the order of the Court dated 16.03.1998.

17 Though the workman has attempted to reopen clause (2) of the joint purshis before this Court, I am not adverting to the submissions of Shri Prabhakaran that clause (2) of the joint purshis is not meant for the future, but is aimed at taking care of the past as the Establishment wanted to avoid financial burden and it was in this backdrop that the Establishment agreed to reinstate the workman without back-wages and similar financial benefits. Firstly, the Industrial Court has deprived the workman of these benefits placing reliance on clause (2) of the joint purshis. Secondly, the workman has not challenged the impugned judgment and therefore, clause (2) of the joint purshis cannot be reopened.

18 I have considered the reasons adduced by the Industrial Court which are based upon the oral and documentary evidence recorded before it. I do not find that the analysis of evidence and the conclusions drawn, could be termed as being perverse or erroneous. I do not find that the impugned judgment could be quashed and set aside on the ground of having caused grave injustice to the Petitioners and/or having caused miscarriage of justice.

19 The Writ Petition is devoid of merit and is, therefore, dismissed. Rule is discharged. No order as to costs.

20 The pending Civil Application does not survive and hence, is
disposed of.

(RAVINDRA V. GHUGE, J.)