

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3273 OF 2002
WITH CIVIL APPLICATION NO.12785/2008
AND CIVIL APPLICATION NO.8042/2014

WITH
WRIT PETITION NO. 3451 OF 2002
WITH CIVIL APPLICATION NO.12786/2008
AND CIVIL APPLICATION NO.7803/2014

Divisional Seed Certification Officer,
Devatkar Building, Vishnu Nagar,
Parbhani.

..Petitioner

Versus

Marathwada Sarva Shramik Sanghatana
Registration No. AWB 121,
Through Trade Union Centre,
Kotwalpura, Aurangabad.

..Respondent

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Advocate for Petitioner : Shri Shah P.M., Senior Advocate
i/b Shri U.S.Malte
Advocate for Respondent : Shri A.S.Shelke

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 21, 2015

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ORAL JUDGMENT :-

1. Both the petitions were admitted by this Court by the order dated 25.11.2004.

2. The petitioner Establishment had preferred Letters Patent Appeal No.101 and 102 of 2004 before the Appeal Bench of this Court which passed an order dated 12.4.2007. The petitioner / establishment approached the Honourable Supreme Court in Special Leave Petition Nos. 7708 and 7709 of

2009.

3. By order dated 7.3.2008, the Apex Court requested this Court to dispose off the Writ Petitions on merits and in accordance with law, preferably within three months from the date of communication of the order.

4. I have heard the learned Advocates extensively on 15.10.2015 and today.

5. I find that all the 102 daily wage employees involved in these two petitions and who had preferred the two complaints bearing ULP Nos. 18 of 1992 and 26 of 1992, have attained the age of superannuation, which is 60 years during the pendency of these two petitions.

6. The following factors deserve consideration:-

(a) In lieu of reinstatement in service and since the daily wagers were not reinstated / offered work by the petitioner, an amount of Rs.1,96,00,000/- was deposited by the petitioner on 17.8.2010 in this Court.

(b) By way of backwages, these 102 daily wagers were permitted to withdraw Rs.1,60,00,000/- on 16.3.2012 after their backwages were calculated from the date of their termination 10.12.1991 till 31.3.2006.

(c) In the first petition, each of the daily wage workmen have withdrawn Rs.1,92,379/- (per person).

(d) In the second petition, each of the daily wage workmen have withdrawn Rs.1,91,419/- (per person).

(e) The above payments were made and amounts were withdrawn as their backwages from 10.12.1991 till 31.12.2006.

(f) Each of the 102 workmen have worked for periods ranging from 10 years to 17 years as daily wage earners, as on 10.12.1991 when they were retrenched.

(g) Each of them are out of employment for the past 24 years.

(h) Out of the 102 employees involved in these proceedings, 32 have passed away, thereby dis-entitling them to any backwages beyond their dates of demise or dates of superannuation, whichever is earlier.

(i) 6 persons have migrated.

(j) About 4-5 persons are above 80 years of age. Rest of them are above 60 years of age.

7. Shri Shah, learned Sr. Advocate for the petitioner submits that several persons amongst these 102 have attained the age of superannuation and as such, cannot be entitled for any further service benefits after the age of superannuation. As these workers are claiming to have been in employment from 1974 till 1991, having paid their entire backwages, does not leave the issue of compensation open.

8. Shri Shah, learned Sr. Advocate and Shri Shelke, learned Advocates for the petitioners and the respondent / employees respectively have canvassed a host of factors. I am not required to consider the entire submissions in the light of the ratio laid down by the Apex Court in the following four 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].*

9. Considering the fact that all these employees involved are beyond the age of 60 years, I find it fruitless to reopen the entire issue so as to consider whether the Labour Court had rightly granted them the relief of reinstatement with continuity and backwages in their Complaints filed in 1994. So also, if that exercise is undertaken and if it is concluded that none of these 102 employees were entitled to the reliefs granted by the Labour

Court, it would practically be impossible to recover the amounts disbursed to each of them towards backwages, which they have withdrawn more than 4 years ago.

10. In the light of the fact situation, as recorded above, I find that these petitions are rendered of an academic interest and it would be impractical to consider the legality and the validity of the impugned judgments and thereby permit recovery of the amounts paid to these workers in the event the petitioner / establishment succeeds. Per contra, each of these workers have received their entire backwages not at the rates of wages last drawn but after taking into account the wage rise, which was introduced by the petitioners from time to time. As such, even if it is presumed that the employees succeed in these proceedings, at best they would be entitled for their backwages and gratuity on the presumption that they are in continuous employment from 10.12.1991 till their age of superannuation.

11. In these peculiar facts and considering the ratio laid down by the Apex Court in the above referred four cases as regards quantifying compensation in lieu of reinstatement with continuity and backwages, I find it appropriate to quantify such compensation.

12. In quantifying such compensation, in the light of the ratio laid down by the Apex Court, it cannot be ignored that in the four cases before the Apex Court referred to above, compensation of Rs.30,000/- per year of service was directed to be paid in lieu of reinstatement with continuity and

backwages. In the instant cases, each of these workers have received their entire backwages from 10.12.1991 till 31.3.2006. As recorded above, each of them in the first petition have received Rs.1,92,379/- and in the second petition, each of them has received Rs.1,91,419/-.

13. As such, in addition to the amounts received by the respondent / employees as set out in the foregoing paragraphs, I hereby direct compensation to be paid to those workers who have not attained the age of superannuation as on 31.3.2006, considering their remainder portion of service upto the age of superannuation as follows:-

Sr.	Remaining period of service	Amount
1	1 Year	Rs.20,000/-
2	2 Years	Rs.30,000/-
3	3 Years	Rs.40,000/-
4	4 Years	Rs.50,000/-
5	5 Years to 10 Years	Rs.65,000/-
6	Above 10 years	Rs.75,000/-

14. Learned Advocate for the petitioner has placed on record a chart in both these petitions indicating the age of each of the complainants as on 1.1.2008. Both the charts are marked as Exhibit "X" in these two petitions for identification. As such, based on Exhibit "X", the petitioner shall prepare a chart of those workers, who had not attained 60 years of age as on 31.3.2006 so as to indicate the remainder portion of their service till attaining the age of 60 years and shall furnish such a chart to the learned Advocate for the respondent within a period of four weeks from today.

15. After receiving the said chart, the learned Advocate for the respondent will identify each worker, who is entitled for compensation as per the rates mentioned above and shall withdraw the said amounts from this Court by producing an identity proof in the form of an Election Id card or Aadhar Card. An amount of Rs. 36,00,000/- as on 16.3.2012 with accrued interest is lying with this Court from which these amounts will be paid.

16. It is made clear that those employees amongst the 102 who are likely to have retired prior to 31.3.2006 and have yet taken their monthly wages as backwages till 31.3.2006, shall not be liable for recovery or repayment of the excess amount.

17. It is also made clear that the compensation granted as above, in addition to the entire backwages received by each of these workmen till 31.3.2006 shall be a comprehensive compensation as full and final payment of all legal dues arising out of their employment and non-employment with the petitioners. No further claims shall be made by any of these employees on any count and under any statute or regulation against the petitioner.

18. In the event, after disbursing the amounts to these employees as above, any amount is available, the petitioner shall then be at liberty to withdraw the residual amount.

19. In case of such employees, who have passed away and whose legal

heirs are already on record by virtue of the orders passed by this Court on their Civil Applications, they would be entitled to withdraw the amounts as per the compensation granted above. In the event, any of the parties desire a clarification, in the wake of demise of any employee and whose legal heirs are not on record, they shall be at liberty to file a Civil Application for seeking orders from this Court.

20. In the result, this petition is partly allowed and Rule is made partly absolute in the aforesaid terms.

21. All pending Civil Applications, stand disposed off.

(RAVINDRA V. GHUGE, J.)

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