

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9067 OF 2013

MUNICIPAL COUNCIL, BEED,
THROUGH ITS CHIEF OFFICER,
VENKATI BALIRAM NILAWAD,
AGE 52 YEARS, OCCU-SERVICE,
R/O MUNICIPAL COUNCIL, BEED,
TQ. AND DIST. BEED

PETITIONER

VERSUS

1. SUBHASH S/O SHIVRAM MHASKE,
AGE-42 YEARS, OCCU-NIL,
R/O OLD S.P.OFFICE,
GANESH NAGAR, BEED,
TQ. AND DIST. BEED,

2. STATE OF MAHARASHTRA (**DELETED**)

RESPONDENT

Mr.G.K.Naik Thigale, Advocate for the petitioner.

Mr.P.V.Barde h/f Mr.V.P.Latange, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/06/2015

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the impugned judgment and award dated 03/04/2013 delivered in Ref.(IDA) No.29/2006. The Labour Court has allowed the reference partly and the petitioner is

directed to reinstate the second party workman, who is respondent No.1 herein, in service with continuity and 25% back wages from the date of termination which is 25/12/1991.

3. Respondent No.1 joined services with the petitioner on 01/12/1989 and claimed to have continued in employment till his termination on 25/12/1991. Grievance of the petitioner is that though the burden of proving completion of 240 days in the continuous and uninterrupted service of the employer u/s 25(B) of the Industrial Disputes Act lay upon the workman, there was not an iota of evidence before the Labour Court except that the Chief Officer of the petitioner Municipal Council issued an experience certificate dated 03/08/2002 to indicate that respondent No.1 employee was working from 01/12/1989 upto 25/12/1991.

4. The petitioner submits that since the said certificate was issued by the Chief Officer, the petitioner was virtually precluded in questioning the propriety behind the issuance of such a certificate and that too after 11 years from the date of disengagement of respondent No.1. In fact, the petitioner had disputed the very engagement of respondent No.1 in service vide its written statement at Exh.C-3 before the Labour Court.

5. It is further submitted that the reference has been allowed not on the basis of the statutory record maintained by the petitioner, but purely on account of the certificate dated 03/08/2002 issued by the Chief Officer of the petitioner. It is, therefore, prayed that the impugned award deserves to be quashed and set aside.

6. Mr.Barde, learned Advocate alongwith Mr.V.P.Latange, has vehemently contended that the petitioner does not maintain proper record. Tenure of engagement of the workman cannot be proved as records are not produced. Workmen like the respondent do not have any bargaining power and as such they worked under such conditions as may be imposed by the petitioner. The certificate dated 03/08/2002 has been rightly issued by the Chief Officer and the same cannot be discarded as the highest Revenue Officer from the petitioner/council has issued the certificate.

7. He further submits that the Labour Court has correctly placed reliance upon the said certificate which cannot be controverted and hence no interference is called for. He further adds that by virtue of Section 17(B) of the Industrial Disputes Act, the respondent is entitled for last drawn wages during the pendency of this petition.

8. I have considered the rival submissions of the parties, who have taken me through the petition paper book, pleadings before the Labour Court and the impugned award.

9. It is undisputed that the respondent is out of employment for the past 24 years. Even if the certificate dated 03/08/2002 issued by the Chief Officer is accepted, it would indicate that the respondent had worked as a daily wager for 24 months.

10. In similar set of facts in the matter of Sandeep Pandurang Nannaware Vs. Shrigonda Krishi Utpanna Bazar Samiti, Writ Petition No.2114/2012, decided on 16/12/2013, this Court had observed in paragraph Nos.5 to 11 as follows :-

*“5. In case of **Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri**, reported at 2013 LLR 1042, the Apex Court has concluded that when the termination of an employee amounts to retrenchment, Section 25F would be applicable. It is only when the termination falls u/s 2(oo) (bb), it would amount to an exception to retrenchment. In the applicability of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, Section 25F, 25G and 25H would not be applicable. In the instant case, it is an admitted position that the petitioner had worked for 240 days in the continuous service of the respondents.*

6. In the case of **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota Vs. Mohan Lal, reported at 2013 LLR 1009**, the Apex Court has concluded that Section 25F is a condition precedent for payment of retrenchment compensation and one month's notice or notice pay in lieu thereof if a workman has completed 240 days in continuous employment. Consequences of such non compliance may normally result in reinstatement. Illegal or invalid retrenchment is established when the termination of a workman is held to be illegal since at the time of termination, a workman has not been paid retrenchment compensation and one month's notice or notice pay in lieu thereof. Reinstatement can be converted into an appropriate payment of compensation in lieu of reinstatement. The Apex Court has further held that relevant factors are required to be considered while converting the relief of reinstatement into that of compensation in lieu of reinstatement.

7. In the instant case, the petitioner has worked only for a period of about 14 months. Since 01/03/2003, he has been out of employment which is almost 11 years of unemployment as on date.

8. In view of the contention that the appointment of the petitioner was done in an illegal manner, the Labour Court, as a fact finding Court, found it fit and proper to convert the relief of reinstatement into that of compensation in lieu of reinstatement. A similar finding has been arrived at by the Industrial Court, Ahmednagar.

9. I do not find any fault with either of these judgments since in light of the Law as laid down by the Apex Court, reinstatement in such circumstances, when an employee has worked only for a year or little more, would amount to foisting an employee on the employer. Compensation in lieu of reinstatement seems to be appropriate in this situation. However, the amount of compensation arrived at by the Labour Court and upheld by the Industrial Court is not justified, being meagre.

10. In the case before the Apex Court, **Assistant Engineer (Supra)**, the employee had worked from 01/11/1984 till 17/02/1986 which is approximately 15 months. In the case on hand, the petitioner has worked for about 14 months. I am therefore of the considered view that the order of compensation by the Labour Court and upheld by the Industrial Court needs to be modified. I, therefore, find it appropriate to award an amount of Rs.1,00,000/- as compensation in lieu of reinstatement. This would meet the ends of justice and would also avoid foisting of an employee on the employer in the light of the appointment being held to be illegally made.

11. The impugned judgments are, therefore, modified and respondent No.1 is directed to pay compensation of an amount of Rs.1,00,000/- to the petitioner in lieu of reinstatement. It is pointed out by the learned advocate for respondent No.1 that the amount of Rs.25,000/- ordered by the Labour Court has already been paid to the petitioner. This statement is accepted by the

petitioner. As such, respondent No.1 is directed to pay Rs.75,000/- as the residual amount of compensation to the petitioner within a period of 8 weeks from today.”

11. In yet another case, which stood on similar set of facts, this Court, in the matter of State of Maharashtra Vs. Santosh Gorakh Patil, 2015(3) Mh.L.J. 922 has concluded in paragraph No.9 to 15 as under :-

“9. I, however, do not desire to go into this aspect since the respondent has been out of employment for the past 28 years. He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009] and in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], I am convinced that the impugned judgment and award deserves to be partly set aside.

10. Paragraph No.20 of the judgment in the case of Mohanlal (supra) reads as under:-

“ We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position

laid down by this Court in Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh : (2013) 5 SCC 136 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

11. Paragraph No.29 of the judgment in the case of Gitam Singh (supra) reads as under:-

" In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly.

Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9

per cent per annum."

12. It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos.4 and 5 in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558] as under:-

"4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

13. The Honourable Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], has held in paragraph No.14, as under:-

" It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240

days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

14. Taking into account that the respondent was granted last drawn wages from the year 2000, under orders of this Court and keeping in view the fact that he is out of employment for last 28 years, an amount of Rs.50,000/- as compensation, in lieu of reinstatement and continuity of service, would be an appropriate relief.

15. As such, this petition is partly allowed. The impugned judgment and award, dated 5.4.1994, is modified. The petitioner is directed to pay compensation of Rs.50,000/- (Rs. Fifty Thousand only/-) in lieu of reinstatement and continuity of service to the respondent, besides the wages paid to the respondent under Section 17B of the ID Act."

12. Considering the fact that the petitioner is in his late 40's, is out of employment for the last 24 years and has put in about 24 months in employment, it would be appropriate to follow the ratio laid down by the Apex Court, which has been relied upon by this Court in the above referred 2 judgments and quantify compensation to be paid to the respondent in lieu of re-instatement, continuity and back wages.

13. As such, compensation to the extent of Rs.80,000/- to be paid to the respondent would be reasonable.

14. In the light of the above, this petition is partly allowed. The impugned award dated 03/04/2013 delivered in Ref.(IDA) No.29/2006 is modified and replaced and the respondent is held entitled for an amount of Rs.80,000/- (Rs. Eighty thousand only) as a full and final compensation, which the petitioner shall pay to him within a period of 3 (three) months from today.

15. Rule is accordingly made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)