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

WRIT PETITION NO. 6922 OF 2011
WITH
WRIT PETITION NO.6929 OF 2011
WITH
WRIT PETITION NO.6930 OF 2011
WITH
WRIT PETITION NO.6931 OF 2011

Zilla Parishad, Beed.
Through it's Chief Executive Officer,
Zilla Parishad, Beed.

...PETITIONER in all petitions

-VERSUS-

Shri Shadulla Mohd. Shaikh.
Through, Trade Union,
Center Medical College Area,
Ambajogai, District Beed.

...Respondent in WP/6922/11

Shri Parshuram Ankush Fad.
Through, Trade Union,
Center Medical College Area,
Ambajogai, District Beed.

...Respondent in WP/6929/11

Shri Balaji Shriram Fad.
Through, Trade Union,
Center Medical College Area,
Ambajogai, District Beed.

...Respondent in WP/6930/11

Shri Limbaji Narhari Pujari.
Through, Trade Union,
Center Medical College Area,
Ambajogai, District Beed.

...Respondent in WP/6931/11

...

Advocate for Petitioner : Shri More Popat P.

Advocate for Respondents : Shri Gunale V.D.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2015

Oral Judgment:

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

2 The Petitioner in all these petitions is the Zilla Parishad, Beed. The Respondents in all these petitions were the original Second Party Workmen before the Labour Court, who are identically situated.

3 The Petitioner has challenged identical judgments and awards delivered by the Labour Court by which the References were allowed in favour of the Respondents. Since a common point of law and similar facts are being considered by this Court, I have taken up all these petitions together for hearing and disposal.

4 The Petitioner is aggrieved by the judgments and awards of

the Labour Court, which has allowed the References in favour of the Respondents as follows:-

Sr. No.	Name of Respondent	Writ Petition No.	Reference (IDA) No.	Impugned Judgment
1	Shadulla Mohd. Shaikh	6922/2011	12 of 2000	30.12.2010
2	Parshuram Ankush Fad	6929/2011	13 of 2000	30.12.2010
3	Balaji Shriram Fad	6930/2011	01 of 2000	27.08.2009
4	Limbaji Narhari Pujari	6931/2011	26 of 2000	30.12.2010

5 The Respondents had contended before the Labour Court that they were working as Mile Kamgars (Mile Workers) with the Petitioner for the periods ranging from about 20 to 24 months. Their duty was to dig drainages so that the rain water is drained off the road. Each one of them was allowed work for a distance of one mile or more. They were commonly called as “Mile Kamgars” (Mile Workers).

6 All the Respondents had contended that they were orally terminated by the Petitioner on or around 15.12.1990 to 25.12.1990. They were not paid retrenchment compensation as prescribed under Section 25F of the Industrial Disputes Act, 1947. Similarly, juniors were retained as Mile Workmen and the Respondents were terminated thereby, resulting in violation of Section 25G of the Industrial Disputes Act, 1947.

7 All the Respondents led oral evidence. The notice for

production of documents was allowed by the Labour Court. However, the Petitioner did not produce all the relevant documents as ordered and hence, an adverse inference was drawn against the Petitioner.

8 Considering the oral and documentary evidence on record, the Labour Court has allowed all the Reference Cases by granting reinstatement with continuity, but without back-wages in the case of the three Respondents, namely, Shadulla Shaikh, Parshuram Ankush Fad and Limbaji Pujari. In the case of the fourth Respondent, namely, Balaji Fad, the Labour Court has granted a fresh appointment to the said Respondent. In short, he was deprived of reinstatement, continuity of service and back-wages.

9 It is pertinent to note that none of these Respondents have challenged the denial of back-wages or denial of reinstatement and continuity in the case of the fourth Respondent in this case.

10 Shri More, learned Advocate for the Petitioner/ Zilla Parishad, strenuously submitted that merely on the basis of an adverse inference, all these reference cases have been allowed. The Petitioner produced whatever evidence that it had and which was available. All the Respondents were orally engaged since it was temporary nature of work

and especially for the purpose of draining rain water from the highways and hence, digging of the drainages.

11 Shri More further submits that these four Respondents have worked in between 20 to 28 days in the period of two years. He denies that either of these Respondents were ever engaged continuously much less have completed 240 days in a continuous employment.

12 Shri More submits that the burden to prove continuous service and establish entitlement to the protection of Sections 25B, 25F and 25G of the Industrial Disputes Act, 1947 lies on the shoulders of the Respondents. He indicates from the impugned awards that the Labour Court itself has drawn a conclusion that the Respondents did not file any specific documentary record in support of their cases. He, therefore, makes a grievance that purely on the basis of an adverse inference, the Labour Court has concluded that these Respondents deserve to be reinstated. He, therefore, prayed for the quashing and setting aside of the impugned awards and further prays for dismissal of the reference cases.

13 He further submits that the Reference Cases were delayed and hence, were hit by limitation. He relies upon the judgments of the Honourable Supreme Court in the cases of *Range Forest Officer v/s S.T.*

Hadimani, 2002 (3) SCC 25 : AIR 2002 SC 1147 and *Assistant Engineer, Rajasthan State Agriculture Marketing Board v/s Mohan Lal*, AIR 2013 SCW 4877.

14 Shri Gunale, learned Advocate on behalf of all the Respondents, has strenuously defended the impugned awards. He submits that all these Respondents were daily-wagers. The appointment orders were not issued. If the contention of the Petitioner is accepted, it would amount to exploitation of the poor class. The Respondents worked continuously as per the directions of the Petitioner. They were made to work in different areas. Nature of the work was of perennial character and the said work continues even till today.

15 Shri Gunale, in the above backdrop, submits that it would be too much to expect these Respondents to collect the documentary evidence from the office of the Petitioner. They had no access to the records. Issuing a notice for production of documents before the Labour Court in the pending reference cases was the only legal alternate/ option available to these Respondents. They exercised their option and convinced the Labour Court that the documents which were exclusively in the custody of the Petitioner, could be produced only by the Petitioner. Having exhausted the legal remedy, the Labour Court ordered the Petitioner to

produce the relevant record.

16 Shri Gunale further submits that despite the direction by the Labour Court, the Petitioner produced skeletal documents only to project a picture that these Respondents were working intermittently and for periods ranging from 20 to 28 days. This was aimed at misleading the Labour Court. The Labour Court saw the design of the Petitioner and therefore, directed the Petitioner to produce all the documents so as to cover the period during which the Respondents claimed to have worked. The Petitioner chose not to produce the entire record. As such, the Labour Court has rightly drawn an adverse inference which is permissible under law.

17 Shri Gunale submits that the Respondents were unaware of the provisions of law. They were not guided by any person who could make them aware of their rights. Ultimately, when they gathered knowledge, they could challenge their oral termination. They raised an industrial dispute under Section 2A of the Industrial Disputes Act, 1947 and due to the non cooperation of the petitioner, the appropriate Government referred the industrial dispute to the Labour Court for adjudication.

18 Shri Gunale, therefore, submits that these petitions be dismissed with costs and the Respondents be given benefit of the awards. He submits that ever since the pendency of these petitions, the Respondents would be entitled for the last drawn wages under Section 17B of the Industrial Disputes Act, 1947.

19 I have considered the submissions of the learned Advocates as are recorded herein above. Both of them have taken me through the petition paper books and the relevant records.

20 There is no limitation prescribed under the Industrial Disputes Act, 1947 for raising an industrial dispute either under Section 2A or under Section 2(k) of the said Act. Therefore, the issue of delay was not involved and the Labour Court has rightly disregarded the said contention of the Petitioner.

21 It is undisputed that the Respondents could not produce any record before the Labour Court since there was no record available with them keeping in view the fact that they were orally appointed and had been orally terminated.

22 The Petitioner had produced some record before the Labour

Court to indicate that the Respondents were not working for such durations as was claimed by them. They were paid roughly about Rs.600/- in a month. In this backdrop, the Labour Court, considering the oral evidence of the Respondents and the refusal of the Petitioner to produce the record as was directed by it, came to the conclusion that the Respondents had worked continuously and were, therefore, entitled for reinstatement/ fresh appointment.

23 It cannot be overlooked that these Respondents had worked in between 1989-1990. They had put in short tenures in employment. They have been out of employment for the past 25 years. The industrial dispute brought before the Labour Court by way of the reference cases was raised by the Respondents after being in slumber for about 10 years.

24 The Honourable Supreme Court has considered similar fact situation as recorded above and has held that it would be more practicable and reasonable to quantify compensation rather than reinstate the employees who had worked for about a year or two and were out of employment for periods like 15 years to 25 years. This view has been taken by the Apex Court in *(a) Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, **[2013 LLR. 1009]**; *(b) Assistant Engineer, Rajasthan Development Corporation and*

another Vs. Gitam Singh, [(2013) 5 SCC 136]; (c) BSNL Vs. Man Singh, [(2012) 1 SCC 558; and (d) Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].

25 In such circumstances, I find it more practicable and reasonable to quantify compensation to be awarded to the Respondents in lieu of reinstatement/ continuity/ fresh appointment. They had been earning about Rs.500/- to 600/- per month till 1989-1990. The impugned awards have been delivered in 2010. The effect of Section 17B of the Industrial Disputes Act, 1947 could also be kept in view.

26 In the light of the above, considering the ratio laid down by the Honourable Supreme Court in the above referred four judgments and the fact that the Petitioner/ Zilla Parishad is in a weak financial condition, I am inclined to quantify compensation of Rs.60,000/- in favour of each of these four Respondents by calculating the same at the rate of Rs.30,000/- per year.

27 As such, these petitions are partly allowed. The impugned judgments and awards are modified and replaced by the direction to the Petitioner/ Zilla Parishad to pay compensation of Rs.60,000/- (Rupees Sixty Thousand) to each of these four Respondents within a period of 14

(fourteen) weeks from today.

28 Rule is, accordingly, made absolute.

(RAVINDRA V. GHUGE, J.)