

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8544 OF 2015

1.The Chief Executive Officer,
Zilla Parishad, Aurangabad.

2. The Executive Engineer,
Zilla Parishad (Construction
Division), Aurangabad.

..Petitioners

Versus

Sadashiv Sheku Salve,
At Khamgaon, Post. Vita,
Tq. Kannad, Dist. Aurangabad.

..Respondent

...
Advocate for Petitioners : Shri Jagatkar A.A.
Advocate for Respondents : Shri Khandelwal R.K.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: October 16, 2015
...

ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are challenging the impugned award dated 7.3.2015, delivered by the Labour Court, Aurangabad in Reference (IDA) No. 20 of 2006.

5. The submissions of the petitioners are summarized as follows:-

(a) The respondent / employee claims to have joined work on 1.7.1984 and was orally terminated on 1.1.1988 after having put in 2 years and 6 months as a daily wager.

(b) An industrial dispute under Section 2A of the Industrial Disputes Act, 1947 is raised after 18 years post oral termination.

(c) By the impugned judgment, the Labour Court has granted reinstatement with continuity of service from 1.1.1988 and with 25 percent backwages by its judgment and award dated 7.3.2015.

(d) There was no evidence before the Labour Court that the respondent was working continuously and had put in 240 days in employment in 12 calendar months prior to the date of reference which is 1.1.1988.

(e) In the absence of any evidence, the reference has been allowed.

(f) After 18 years post oral termination, the petitioner cannot be expected to produce documentary evidence of a daily wager who had worked intermittently.

(g) Besides referring to judgments and reproducing paragraphs of various judgments cited, there has been no reasoning in support of the conclusion of the Labour Courts.

(h) The petition be allowed and the judgment and award be set aside.

5. Shri Khandelwal, learned Advocate appearing on behalf of the respondent has strenuously supported the impugned judgment. He submits that the respondent is a poor labourer who was working on daily wages. Since he was not advised properly, he has raised an industrial dispute after 18 years.

6. The petitioners neither cross-examined the respondent, nor did they lead evidence. They remained absent even at the time of the final arguments in the matter. The petitioners were imposed with costs of Rs.30,000/- by the Labour Court vide its order dated 9.2.2015, while permitting them to file their written statement after a delay of 8 years. The said costs were not deposited and hence no written statement was placed before the Labour Court.

7. He further submits that since he had no documents to show that he was working continuously, he has tendered an affidavit in lieu of examination-in-chief and reiterated that he was working continuously for 240 days. The petitioner did not cross-examine the respondent employee and his deposition has gone unchallenged. This was considered by the Labour Court and the affidavit of the respondent was accepted. He, therefore, submits that this petition deserves to be dismissed as the Labour Court has rightly granted reinstatement with continuity of service and 25 percent backwages.

8. I have considered the submissions of the learned Advocates as have

been recorded herein above.

9. It is not in dispute that the respondent claims to have worked for two years and six months and has raised an industrial dispute after 18 years. It is not in dispute that he is out of employment for the last 28 years.

10. The Labour Court, in my view, has fallen in a patent error in relying only on the affidavit in lieu of examination-in-chief of the respondent while accepting his contention that he was working for 240 days in the continuous service with the petitioners. It is trite law that claims are not decided merely on an oral statement in an affidavit, in the absence of any documentary evidence.

11. I find from the impugned judgment that the Labour Court has merely loaded the judgment by reproducing several paragraphs of the judgments cited. It, however, lost sight of the fact that unless the employee proves completion of 240 days in continuous service, Section 25-F of the Industrial Disputes Act, 1947 will not be attracted.

12. At several places in the impugned judgment, the Labour Court has held that since the examination-in-chief has gone unchallenged, violation of Section 25F will have to be presumed. So also, the Labour Court has granted 25 percent backwages from 1.1.1988 till the judgment dated 7.3.2015 despite the fact that the respondent was in deep slumber for 18 years and had not raised any challenge to the purported oral termination. I,

therefore, do not find that the impugned award could be sustained.

13. Nevertheless, the Apex Court in the following four judgments has held that where an employee has put in a short tenure of service and is out of employment for a long period, quantifying compensation in lieu of reinstatement in service would be more practicable:-

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].

14. In the above referred judgments, the Apex Court has worked out compensation at the rate of Rs.30,000/- per year of service.

15. In the light of the above, this petition is partly allowed. The impugned judgment and award is modified by directing the petitioners to pay Rs.75,000/- as compensation in lieu of reinstatement with continuity of service and 25 percent backwages.

16. The said amount shall be deposited in this Court within a period of

twelve weeks from today, following which the respondent would be at liberty to withdraw the said amount, without conditions, but by producing tangible identity proof and on being duly identified by his learned Advocate.

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

(RAVINDRA V. GHUGE, J.)

...