

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7404 OF 2014

Bharat S/o Motiram Bagul,
Age-41 years, Occu-Unemployed,
R/o At Post Wadgaon Tigaji, Tq. Soygaon,
Dist. Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Deputy Conservator of Forest,
Forest Division, Usmanpura,
Aurangabad, Dist.Aurangabad,

2. The Range Forest Officer,
Nagad, Tq. Kannad,
Dist. Aurangabad

RESPONDENTS

WITH
WRIT PETITION NO.9001 OF 2014

1. The State of Maharashtra,
Through the Deputy Conservator of Forest,
Forest Division, Osmanpura, Aurangabad,

2. The Range Forest Officer,
At Post : Nagad, Tq. Kannad,
Dist.Aurangabad

PETITIONERS

VERSUS

Bharat Motiram Bagul,
Age-Major, Occu-Nil,
R/o At Post Wadgaon (Tigji),
Talukar Soygaon, Dist.Aurangabad

RESPONDENT

Mr.A.S.Shelke, Advocate for the petitioner.
Mr.U.K.Patil, Spl.Counsel with Mr.S.N.Kendre, AGP for respondent /
State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/11/2015

ORAL JUDGMENT :

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

2. The first petition is filed by the employee / workman Bharat Motiram Bagul challenging the judgment and award dated 01/02/2014 delivered by the Labour Court at Aurangabad, by which Ref. (IDA) NO.31/2006 is partly answered in the affirmative and relief of compensation of Rs.50,000/- in lieu of reinstatement with continuity of service has been granted to the employee. The second petition is filed by the State Department, Range Forest Officer challenging the same judgment. I have, therefore, heard both these petitions together.

3. For the sake of brevity, the litigating sides in these two petitions shall be referred to as the workman and the establishment.

4. The workman had claimed that he had joined on 01/01/1995 as a daily wager. After having worked continuously and without

interruptions, he was orally terminated by the Establishment on 01/04/2003. Section 25 (F) of the I.D.Act, 1947 r/w Section 25 (G) were not complied with by the establishment. New recruitment was carried out by the establishment post oral termination of the workman. He, therefore, raised an industrial dispute.

5. The establishment had opposed the reference proceedings preferred by the workman by filing their written statement below Exh.C-4. It was contended that the establishment is not an Industry and the workman was never appointed as a daily wager on their normal scheme. He was engaged under the employment Guarantee Scheme (EGS) and therefore he was not entitled to raise any grievance about his disengagement since the labour laws are not applicable to the EGS.

6. Mr.Patil, learned Advocate for the Establishment strenuously submits that the Establishment was in operation to achieve the objects of the National Forest Policy, 1988. It could be said to be exercising sovereign functions. Protection of the forests and its yield would therefore bring the establishment out of the definition of the Industry u/s 2(j) of the I.D.Act.

7. He further submits that the workman was initially engaged on daily wages on its normal scheme. However, from 1999 onwards till his oral disengagement, he was working on EGS. Unfortunately, the establishment did not produce the record from 01/11/1999 till 31/03/2003 and therefore the Labour Court has drawn an adverse inference. Though the establishment cannot extricate itself from this situation, if the matter is remanded to the Labour Court, it can surely adduce oral and documentary evidence to establish that the workman was engaged on EGS for several years prior to the date of reference i.e. the date of his oral termination 01/04/2003.

8. Mr.Shelke, learned Advocate has countered the contention of the establishment that it is not an Industry. He straight away points out that the State Government has included the Forest Department in its Scheduled Industry under the Minimum Wages Act. The moment any industry is included / notified as a Scheduled Industry and minimum rates of wages are prescribed for such industry, all arguments about whether it is an Industry or not are put to rest. It is, therefore, a foregone conclusion that the establishment is a Industry.

9. He further submits that the establishment was ordered to

produce its Muster Rolls by the Labour Court. The said order was passed below application Exh.U-6. The establishment selectively produced the muster rolls for 2 months from 01/09/1999 to 31/10/1999 below Exh.C-11, C-12 and C-13 which pertain to the EGS. However, the Muster Rolls produced below Exh.C-9 and C-10 indicate that the workman was working on the normal scheme of the establishment. He, therefore, prays for setting aside the impugned award to the extent of denial of reinstatement with continuity and back wages.

10. I have considered the submissions of the learned Advocates, as recorded above.

11. The issue as to whether the establishment is an Industry or not, has been dealt with by the Labour Court. It was concluded that the Establishment is an Industry since it was declared to be a scheduled employment under the Minimum Wages Act. It does not appear that the establishment could prove before the Labour Court that it was not covered by the provisions of the Minimum Wages Act and that it was not declared to be a Scheduled Industry.

12. The crux of the matter lies in the aspect as to whether the

workman was working on the normal scheme as on date of his termination. The establishment did not produce any evidence for the period 01/11/1999 till 31/03/2003, so as to indicate that the workman was working on EGS till his date of termination. Despite an opportunity having been granted by the Labour Court to the Establishment, it has squandered away the said opportunity.

13. Nevertheless, in the event it is proved with the aid of documentary evidence that the workman was working on EGS till the date of his termination, it would result in a miscarriage of justice by entertaining a challenge to such disengagement. Despite the laxity on the part of the establishment, this matter deserves to be remanded to the Labour Court only for this purpose. Needless to state, the rigours of litigation, being suffered by the workman, will have to be softened.

14. In the light of the above, the impugned award dated 01/02/2014 is set aside to the extent of the directions of the Labour Court in Clause II of the order. The conclusions of the Labour Court that the establishment is an Industry considering its inclusion in the scheduled employment under the Minimum Wages Act, is sustained.

15. Both these petitions are, therefore, partly allowed and the following directions are issued while deciding Ref.(IDA) NO.31/2006 :-

- a. Both the parties shall appear before the Labour Court on 05/12/2015.
- b. Formal notices need not be issued by the Labour Court.
- c. The establishment / first party before the Labour Court is given one more opportunity to produce all the muster rolls upto 31/03/2003 within a period of 4 (four) weeks from the date of appearance.
- d. Both the parties are permitted to lead additional oral and documentary evidence.
- e. The Labour Court shall consider the evidence recorded earlier and the additional evidence and shall decide whether the workman / second party was working on EGS till his date of termination or on the normal scheme and shall accordingly decide the said reference.
- f. In the event, it is proved that the second party workman was working on the normal scheme as on the date of his termination, the Labour Court, while deciding the non-compliance of Section 25(F) and (G) of the I.D.Act, shall follow the law laid down by the Apex Court in the following 3 cases :-
 1. *Ajaypal Singh Vs. Haryana Warehousing Corporation*, [(2015) 6 SCC 321],
 2. *Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon Employees Union*, [(2015) 4 SCC 544],
 3. *Sudarshan Rajpoot Vs. Uttar Pradesh State Road Transport Corporation* [(2015) 2 SCC 317]
- g. Besides the above case law, the Labour Court shall consider

the judgments cited by both the sides.

- h. The Labour Court shall endeavour to decide Ref.(IDA) No.31/2006 as expeditiously as possible and preferably on or before 30/05/2016.
 - i. The establishment / first party before the Labour Court shall pay an amount of Rs.5,000/- per month beginning from 01/12/2015 to the workman / second party till the date of decision of the Labour Court in the reference proceedings.
 - j. The amount of Rs.5,000/- shall be deposited before the Labour Court or shall be directly paid to the second party / workman on or before the 10th day of each month beginning from December 2015.
 - k. Alternatively, the first party / establishment is at liberty to allot work to the second party workman from 01/12/2015 onwards and pay Rs.5,000/- per month.
 - l. This direction, as above, shall not create any right in the workman to claim equities and continuance in employment as this direction is issued only to reduce his rigours of litigation.
 - m. Both the litigating sides shall co-operate in the expeditious disposal of the reference proceedings and shall not seek an adjournment on unreasonable or trivial grounds.
16. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)