

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9135 OF 2014

1. The Deputy Conservator of Forest,
Forest Division, Osmanpura,
Aurangabad,

2. Range Forest Officer, (Pradeshik)
Range Forest Office, Kannad,
Tal.Kannad, Dist.Aurangabad

PETITIONERS

VERSUS

Raju Waluba Tarde,
Age-Major, R/o Nagapur,
Tq.Kannad, Dist.Aurangabad

RESPONDENT

Mr.U.K.Patil, Spl.Counsel with Mr.S.J.Salgare, AGP for the
petitioners.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/10/2015

ORAL JUDGMENT :

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

2. The petitioner has assailed the judgment and award dated
05/10/2013 delivered by the Labour Court in Ref.(IDA) No.33/2006.

3. Mr.Patil, learned Advocate for the petitioner strenuously criticizes the impugned award. Though the respondent claims to have worked from 01/07/1988 till 31/03/1994, he has never worked continuously and has never completed 240 days in continuous employment. The petitioner cannot be said to be an Industry as it is the Forest Department. Though there are divergent views taken by various High Courts as to whether the Forest Department is an Industry or not, the Apex Court has referred the matter to a Larger Bench in the matter of State of U.P. Vs. Jai Bir Singh, 2005(106) FLR 190 = (2005) 3 Mh.L.J. 146 (SC).

4. Mr.Patil has vehemently submitted that the respondent has not worked even for 80 days in a total period of about 6 years as is claimed in the statement of claim. He has pointed out the observations of the Labour Court to contend that the Labour Court has relied upon an affidavit in lieu of evidence filed by the respondent and has concluded that he has worked for 240 days.

5. He further points out from the impugned judgment that the Labour Court itself has noted that the respondent did not place any documentary evidence before the Court and has not examined any

other person, except himself.

6. Mr.Patil has relied upon the judgment of the Apex Court in the case of Range Forest Officer Vs.S.T.Hadimani, AIR 2002 SC 1147(1) and the judgment of the Apex Court in the case of Hindustan Aeronautics Ltd., Vs. Dan Bahadur Singh and others, AIR 2007 SC 2733.

7. Mr.Patil, therefore, submits that this is a fit case for causing interference and calls for setting aside the judgment of the Labour Court dated 05/10/2013.

8. Mr.Shelke, learned Advocate for the sole respondent has defended the impugned judgment. He submits that the entire record as regards the daily wage earnings of the respondent and the duration of his employment as a daily wager, is in the exclusive custody of the petitioner. The respondent has discharged the onus and burden of leading evidence to prove completion of 240 days. The petitioner could have produced the documentary evidence to substantiate its claim.

9. He then relies upon the testimony of Mr.Gangadhar Shinde,

who is the witness of the petitioners. Said witness has admitted that the respondent was not working on the Employment Guarantee Scheme. He admits that the respondent was a daily wager. He admitted the chart produced on record to indicate the number of days worked by the respondent in between November 1989 till August 1994, which establishes completion of 240 days in employment.

10. He submits that the Labour Court has granted compensation for an amount of Rs.50,000/- with interest @ 6% p.a. The respondent has accepted the said judgment. The petition is devoid of merit and deserves to be dismissed.

11. I have considered the submissions of the learned Advocates and have gone through the record available with their assistance.

12. It is an admitted position that besides the affidavit, the respondent has not produced any documentary evidence on the pretext that he had none. The petitioner, however, has examined Mr.Gangadhar Shinde, who is the Range Forest Officer. The said witness has relied upon the chart produced on record. Mr.Shinde has admitted that the respondent was not working on the Employment Guarantee Scheme.

13. Mr.Shinde has stated in his deposition as under :-

- [a] The respondent worked for 8 days in between November 1989 to October 1990.
- [b] Worked for 36 days in between November 1990 to October 1991.
- [c] Worked for 78 days in between August 1993 to October 1993.
- [d] Worked for 182 days during November 1993 to August 1994.

14. In the light of the above, it is evident that the respondent had worked for about 260 days in between August 1993 to August 1994. As such, from August 1994 till September 1993 (Preceding 12 months), he has worked for about 240 days, which is preceding the date of reference that is the date of oral termination of the respondent.

15. In the light of the findings on facts, as recorded above, violation of Section 25-F and 25-G was proved before the Labour Court. This conclusion of the Labour Court is in tune with the ratio laid down by the Apex Court in the case of Range Forest Officer (supra).

16. The reliance placed by the petitioner on the judgment of the Apex Court in the case of Hindustan Aeronautics Limited (supra) is

misplaced. In the said case, the Apex Court held that merely because a candidate completed 240 days, would not confer the right of regularization on him. It would only mandate the compliance of Section 25-F of the Industrial Disputes Act, 1947. It is an admitted position that the petitioner has not paid retrenchment compensation to the respondent u/s 25-F.

17. The Apex Court in the following four cases has considered instances of short tenures of employment and long tenures of unemployment and has concluded that it would be practical and pragmatic to award compensation in lieu of compensation :-

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,
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, (2009) 15 SCC 327.

18. In the instant case, the respondent claimed to have worked in between 01/07/1988 to 31/03/1994 as has been recorded hereinabove. He is out of employment for the past 21 years. In my view, the Labour Court has rightly awarded compensation of

Rs.50,000/- with interest @ 6%. The said conclusion is in tune with the ratio laid down by the Apex Court. The respondent workman has accepted this judgment.

19. As such, considering the evidence adduced by the petitioners through its witness Mr.Gangadhar Shinde, as has been discussed above, I do not find that the impugned judgment and award could be termed as being perverse or erroneous.

20. This petition being devoid of merit, is dismissed. Rule is discharged.

21. Since the petitioners have deposited the entire compensation amount with interest in this Court by DD No.269431 dated 25/02/2015 for an amount of Rs.58,444/-, I find it appropriate to permit the respondent to withdraw the said amount with accrued interest, without conditions. However, he shall produce tangible identity proof while withdrawing the amount and will be identified by the learned Advocate for the respondent.

(RAVINDRA V. GHUGE, J.)