

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.5342 OF 2015

Divisional Manager Food Corporation of India,  
(Asst.General Manager, Food Corporation of  
India)  
Regional Office, (Maha. Rajendranagar, Dattapada  
Road, Borivali [East])  
Mumbai

PETITIONER

VERSUS

Balasaheb Ambadas Gund,  
Age-50 years, Occu-Labour,  
R/o Satpute Gali, Pedgaon,  
Ahmednagar

RESPONDENT

Mr.V.D.Sonawane, Advocate for the petitioner.  
Mr.P.V.Barde, Advocate for the respondent.

( CORAM : RAVINDRA V. GHUGE, J.)  
DATE : 29/10/2015

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and award dated 06/10/2012 delivered by the Labour Court by which Reference (IDA) No.30/2010 has been answered in the affirmative and the respondent is granted reinstatement with continuity of service, but without back wages are denied.

2. The petitioner submits that though it appeared in the matter before the Labour Court, it did not participate in the proceedings.

The written statement at Exhibit C-4 was filed. However, thereafter, the petitioner neither cross examined the respondent, nor led any evidence in the matter.

3. Mr.Sonawane, learned Advocate strenuously submits that the reference has been allowed purely on the basis of the oral evidence of the respondent without any corroboration. Besides a mere statement in the affidavit in lieu of examination in chief, the respondent has not produced any document and as such there was no material before the Labour Court to conclude that the respondent was in continuous service with the petitioner.

4. This matter was heard at length on 29/09/2015. After the submissions of the learned Advocates had concluded, I had expressed a view to the litigating sides by order dated 29/09/2015, which reads as under :-

*“1. This matter was heard at length. Considering the fact that the petitioner has worked for about seven years from 1990 till 1.9.1997 and was out of employment for the past 18 years, I indicated to the learned Advocate for the petitioner that I am inclined to quantify compensation in lieu of reinstatement and continuity of service granted to the respondent by the impugned judgment and award dated 6.10.2012, by placing reliance upon*

*the following judgments of the Apex Court:-*

*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].*

*2. Learned Advocate for the petitioner prayed for a remand on the ground that the petitioner did not participate in the proceedings before the Labour Court from the stage of filing of its written statement and as such, had not extended any assistance to the Labour Court in the reference proceedings.*

*3. I considered the aspect that ever since the oral termination of the respondent, he has been litigating against the petitioner and this petition is his second round upto the High Court, for the redressal of his grievance. In view of the same, I indicated to the learned Advocate for the petitioner that I would be imposing costs of Rs.1,00,000/- on the petitioner to be paid to the respondent in the light of this Court having imposed such costs in the cases of The Manager, **Siemens Limited Vs. The Branch Secretary, Siemens Workers Union - Writ Petition***

**No.7269 of 2011, dated 18.4.2012, Municipal Council, Sillod Vs. Bhanudas Jaywanta Sonawane [2014 I CLR 554], and in the case of Deogiri Nagari Sahakari Bank Ltd. Vs. Ravindra Balkrishna Deshpande - Writ Petition No. 6085 of 2014, dated 14.8.2015.**

4. *Shri Sonawane, learned Advocate, on instructions from the Law Officer, who is present in the Court, seeks time to take further instructions.*

5. *S.O. to 9.10.2015. Matter to appear in the Supplementary Board.”*

5. Mr.Sonwane, learned Advocate, on the one hand has filed an additional affidavit in the nature of written submissions and on the other hand, submits on instructions that if the costs of Rs.1,00,000/- is to be imposed, the said costs may not be awarded to the respondent till the Labour Court decides the reference proceedings after a remand. He has placed reliance upon the judgment of the Apex Court in the matter of BSNL Vs. Bhurumal, AIR 2014 SC 1188.

6. Mr.Barde, learned Advocate submits on behalf of the respondent that he was working for about 7 years from 1990 till 01/09/1997. He is out of employment for the past 18 years.

7. Mr.Barde submits that considering the ratio laid down in the 4 judgments referred to by this Court in its order dated 29/09/2015, the respondent is agreeable for quantification. He has placed on record a recent judgment of the Apex Court in the case of Bhavnagar Municipal Corporation Vs.Jadeja Govubha Chhanubha and another, 2015 AIR SCW 35.

8. He further submits that the reference was made by the Central Government, Ministry of Labour and Employment, New Delhi, u/s 10(1)(d) of the I.D.Act, 1947. Issue of maintainability of the reference, therefore, does not exist.

9. Documents were filed by the respondents below Exhibit U-8/1 to 4. Oral evidence was adduced. The petitioner did not participate in the proceedings and did not give any assistance to the Labour Court. The documents produced by the respondent were not contradicted and there was no cross examination on the deposition of the respondent.

10. Mr.Sonawane submits that the petitioner is not agreeable for quantification of compensation in lieu of reinstatement, continuity

and other benefits. He submits that the matter be remanded and the petitioner will participate in the proceedings before the Labour Court.

11. Mr.Barde points out that this petition was dismissed in default after it was filed on 19/08/2013. The respondent preferred contempt petition. Thereafter, the petitioner moved this Court for restoration of the petition. The laxity and negligence of the petitioner before the Labour Court as well as this Court, is writ large.

12. I have considered the submissions of the learned Advocates, as are recorded hereinabove.

13. There is no dispute that the petitioner has not confronted the respondent on the documents produced and the deposition filed before the Labour Court. The impugned award is virtually ex-parte.

14. The petitioner has relied upon the judgment of the Apex Court in the matter of BSNL (supra), wherein the Apex Court has held that a conclusion based on an affidavit or an unchallenged affidavit is unsustainable.

15. He has also relied upon the judgment of the Apex Court in the Bhavnagar Municipal Corporation case (supra) which is also relied upon by the respondent. In the said matter, the workman had worked for 18 months and was out of employment for 20 years. The Apex Court, therefore, granted compensation of Rs.2,50,000/- to the employee. The petitioner has opposed quantification of compensation and desires that the matter be remanded to the Labour Court.

16. I am partly allowing this petition only on account of the petitioner having failed to participate in the proceedings before the Labour court, which has led to the impugned judgment. Nevertheless, the negligence and carelessness of the petitioner cannot be overlooked. Similarly, the rigours of litigation being suffered by the respondent/employee, while being out of employment, will have to be reduced and softened.

17. In the light of the above, this petition is partly allowed. The impugned award dated 06/10/2012 is quashed and set aside and reference (IDA) No.30/2010 is remanded to the 1<sup>st</sup> Labour Court, Ahmednagar on the following conditions :-

[a] The petitioner shall deposit an amount of Rs.1,00,000/- (Rs.

one lac only) before the Labour Court on or before the 5<sup>th</sup> day of December, 2015.

- [b] The litigating sides shall appear before the Labour Court on 05/12/2015 and therefore formal notices need not be issued by the Labour Court.
- [c] If the amount is deposited as directed above, the respondent shall be at liberty to withdraw the said amount as costs, without any conditions.
- [d] If the petitioner fails to deposit the said amount, this order shall stand recalled. The award dated 06/10/2012 delivered by the Labour Court, Ahmednagar shall stand restored and Ref. (IDA) NO.30/2010 shall, therefore, stand partly allowed.
- [e] If the conditions set out in clause Nos. [a] and [b] are complied with, the Labour Court shall permit both the litigating sides to lead additional evidence. It shall decide the reference proceedings after considering the totality of the oral and documentary evidence earlier recorded and subsequent to the passing of this order.
- [f] The petitioner shall participate in the reference proceedings as per the dates posted by the Labour Court and shall refrain from seeking adjournments on unreasonable / trivial grounds.
- [g] The Labour Court shall not entertain applications for adjournments for unjustifiable reasons and shall decide the reference proceedings on or before 30/04/2016.

( RAVINDRA V. GHUGE, J.)