

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

WRIT PETITION NO. 8756 OF 2014

Yashwant Gangaram Patingrao .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Shivaji T. Shelke, Advocate for the Petitioner.

Shri G. K. Thigle, Addl.G.P. for Respondent Nos. 1 and 2.

Shri R. K. Ingole Patil, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
V. L ACHLIYA, JJ.**

DATE : 25TH FEBRUARY, 2015.

PER COURT :

. Mr. Shelke, the learned counsel for the petitioner submits that, this Court had directed the respondent No. 2 to consider the case of the petitioner afresh in tune with the judgment of the Labour Court, Aurangabad delivered in Complaint ULP No. 126 of 1986. However, the respondent No. 2 did not consider the judgment of the Labour Court in its correct perspective. It was not open for the respondent No. 2 to comment upon the legality of the judgment of the Labour Court and take a different view. The Labour Court vide its order dated 11.07.1990 had directed the respondents therein to reinstate the present petitioner in service with continuity and backwages with effect from 01.06.1986. The

revision filed by the respondent/zilla parishad was dismissed. Even the writ petition filed in this Court was withdrawn. The order of Labour Court was confirmed. The respondents could not have held that, the petitioner has not worked continuously for five years. As such, is not entitled for benefit of Kalelkar award. The respondents are bound to implement the judgment passed by the Labour Court.

2. Mr. Thigle, the learned Additional Government Pleader submits that, the State was not party before the Labour Court in Complaint ULP No. 126 of 1986. The benefits of the Kalelkar award can be given to a person only if he is in continuous service for five years and 240 days in a year. As the petitioner was not in continuous service for five years, the benefit of Kalelkar award is rightly not given to the petitioner.

3. We have considered the submissions canvassed by learned counsel for respective parties.

4. It is not disputed that, the petitioner was in service since the year 1983 with the Zilla Parishad on daily wages. The petitioner filed Complaint ULP No. 126 of 1986 before the Labour Court, Aurangabad. The same is allowed on 11.07.1990. The Labour Court has passed the following order.

O r d e r

1. The complaint is allowed.
 2. It is hereby declared that, the respondents have engaged in unfair labour practice.
 3. The respondents are directed to reinstate the complainant in service with continuity and back wages w. e. f. 1.6.96
 4. Copy of this order be sent to appropriate Govt. & be published on notice board within 15 days.
5. It is also not a matter of debate that the said order passed by the Labour Court is confirmed in the revision by the Industrial Court and the writ petition filed against the said order has been withdrawn by the Zilla Parishad. The said order has attained finality. The order is judicial order. It would not be open for the respondents to sit over the judicial order passed by the competent Court. A direction was given to reinstate the petitioner in service with continuity and backwages. The backwages were given to the petitioner from 01.06.1986 notionally. The petitioner would be deemed to be in continuous service. It appears that, thereafter in the year 1994 the petitioner was actually reinstated and continued in service. In the light of that, the petitioner would be entitled for the benefit of Kalelkar award.

6. In the result, we pass the following order.

ORDER

A. The impugned order is quashed and set aside.

B. The respondents shall grant benefits to the petitioner as per the judgment and order dated 11.07.1990 passed by the Labour Court, Aurangabad in Complaint ULP No. 126 of 1986 including the Kalelkar award as applicable, considering his service from the date of initial appointment. The same be done expeditiously and preferably within a period of six (6) months from today.

C. The writ petition accordingly is disposed of. No costs.

[V. L ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]