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

WRIT PETITION NO. 8000 OF 2013

BABASAHEB BALAJI THOKAL,
Age : 55 years, Occupation : Nil,
R/o Manjeri Haweli,
Tq. and Dist.Beed.

..PETITIONER

-VERSUS-

- 1 The Executive Engineer,
Beed Irrigation Division,
Beed.
- 2 The Deputy Engineer,
Beed Irrigation Sub Division,
Beed.

...RESPONDENTS

...

Mr.PL.Shahane, for the Petitioner.
Mrs.V.A.Shinde, AGP, for the Respondent No.1.
Mr.G.N.Patil, for the Respondent No.2.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th June, 2015

Oral Judgment:

1 Rule.

2 Rule made returnable forthwith and heard finally by the

consent of the parties.

3 Having heard the learned Advocates at length and considering the fact situation, the following material aspects need consideration:-

- (a) The Petitioner was working from 07.12.1986 with the Respondent/ Department and was terminated orally on 01.11.1988, having put in 23 months in employment. His last drawn wages were at the rate of Rs.12/- per day.
- (b) Complaint (ULP) No.13/1989 filed by the Petitioner for challenging his oral termination, resulted in the judgment and order dated 12.07.1991 whereby, the Petitioner was granted reinstatement in service with continuity and full back-wages w.e.f. 01.11.1988.
- (c) The Respondents filed Revision (ULP) No.36/2002, after a passage of about 11 years, before the Industrial Court for challenging the judgment of the Labour Court dated 12.07.1991.
- (d) By judgment and order dated 16.02.2006, the revision petition was allowed, the judgment of the Labour Court dated 12.07.1991 was quashed and set aside and Complaint (ULP) No.13/1989 was dismissed.

- (e) The Petitioner has challenged the said judgment of the Industrial Court dated 16.02.2006 by this petition, which is filed on 21.09.2013, practically after 07 years and 07 months.

4 Though the respective Advocates have canvassed a host of factors, but having considered the same with due circumspection, I am refraining from advertng to all of them in view of the ratio laid down by the Apex Court in four cases, namely, (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, **[2013] LLR 1009**; (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, **[(2013) 5 SCC 136]**; (c) *BSNL Vs. Man Singh*, **[(2012) 1 SCC 558]**; and (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, **[(2009) 15 SCC 327]** and the view taken by this Court, by placing reliance on the said four judgments of the Apex Court, in the matter of the *State of Maharashtra v/s Santosh Gorakh Patil* reported in **2015(3) Mh.L.J. 922**.

5 It is, thus, apparent that the Petitioner, having worked for about 23 months, is out of employment as on date for the past about 27 years. He is said to be 57 years old today. Had he been in employment, he would have superannuated in 2016 (within one year).

6 The Petitioner, who had challenged his termination dated 01.11.1988 before the Labour Court by filing Complaint (ULP) No.13/1989 under Section 28(1) r/w Item-1 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU & PULP Act, 1971), had succeeded by the judgment and order dated 12.07.1991. The said judgment was ex-parte since the Respondents did not participate in the said proceedings beyond the stage of filing their appearance through an Advocate.

7 The Petitioner preferred Miscellaneous Application (ULP) No.7/1993 under Section 50 of the MRTU & PULP Act, 1971 seeking recovery of back-wages from the Respondents. Even the said proceeding was concluded ex-parte as the Respondents did not participate and oppose the claim of the Petitioner.

8 By order dated 03.12.2004, the Labour Court issued a recovery certificate of Rs.17,472/-, which amount has been deposited by the Respondents vide Demand Draft No.203384 dated 30.03.2005 before the Industrial Court at Aurangabad, as per the statement made in paragraph 11 of the affidavit in reply filed by the Respondents herein. Mr.Shahane submits that the Petitioner has not withdrawn the said

amount.

9 Despite the above facts, the Respondents did not rise from their deep slumber to challenge the judgment of the Labour Court. The same was done in 2002, which is practically after 11 years. The issue of maintainability of the revision petition filed by the Respondents under Section 44 of the MRTU & PULP Act, 1971 was raised by the Petitioner. The said issue was not even adverted to by the Industrial Court, Aurangabad while delivering the impugned judgment.

10 Ironically, the Petitioner has also challenged the said judgment of the Industrial Court dated 16.02.2006 belatedly by filing this petition on 21.09.2013. In a reversal of roles, the Respondents have now opposed this petition on the ground that the same is belatedly filed and suffers from inordinate delay and therefore, the petition be dismissed.

11 This Court in the case of *State of Maharashtra v/s Santosh Gorakh Patil* (supra) has observed in paragraphs 2 to 15 as follows:-

“2. *The petitioner contends that the respondent was engaged as a Daily-Wager for performing duties as a Watchman from 22.1.1986 till 7.6.1987. The respondent claims that he was appointed as a Watchman on 1.11.1984 and terminated on 8.7.1987. He preferred Reference (IDA) No.19 of*

1988 for challenging his termination which was allowed by the impugned Award dated 5.4.1994.

3. *Having heard the learned Advocates, I have gone through the petition paper book with their assistance. Apparently, there was no documentary evidence on record to establish that the respondent had worked as a Watchman with the petitioner from 1.11.1984 to 7.6.1987. One month's notice of termination was issued to the respondent and retrenchment compensation was paid, which is proved before the Labour Court.*
4. *The respondent, in his cross-examination before the Labour Court, had stated that he was a Watchman at Mhasave Government Rest House and given work of minor repairing as a Road Biggari. He claims to have been born on 24.4.1969.*
5. *I find from the impugned judgment that the Labour Court has held that the respondent employee had worked continuously as defined under Section 25B of the ID Act.*
6. *There is no evidence on record, much less any submissions, on the part of the respondent / employee that junior workmen have been retained in employment and the respondent has been terminated in contravention of Section 25G of the ID Act. Despite these facts, the Labour Court has concluded that the employee had proved continuous employment under Section 25B and had proved violation of Section 25G of the ID Act, on the part of the petitioner. The fact that the petitioner proved due compliance of Section 25F and that there was no iota of evidence before the Labour Court that juniors have been continued in employment, have been disregarded by the Labour Court which granted reinstatement with continuity of service to the respondent / employee. He was deprived of backwages.*
7. *The respondent has been granted the benefit of*

Section 17B of the ID Act by virtue of the order passed by this Court, dated 23.2.2000 as is referred to hereinabove.

8. *The respondent has placed on record a copy of his School Leaving Certificate, dated 12.12.1982, to indicate his date of birth as 24.4.1969. As such, if the contention of the respondent is accepted, though there is no evidence on record, that he joined employment with the petitioner as a Watchman on 1.11.1984, it will have to be construed that the respondent was employed at the age of 15 years.*
9. *I, however, do not desire to go into this aspect since the respondent has been out of employment for the past 28 years. He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009] and in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], I am convinced that the impugned judgment and award deserves to be partly set aside.*
10. *Paragraph No.20 of the judgment in the case of Mohanlal (supra) reads as under:-*

“We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh : (2013) 5 SCC 136 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground

on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

11. Paragraph No.29 of the judgment in the case of Gitam Singh (supra) reads as under:-

“In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wagger on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum.”

12. It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos.4 and 5 in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558] as under:-

“4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award

of reinstatement should not be passed. This Court has distinguished between a daily wagger who does not hold a post and a permanent employee.”

13. *The Honourable Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], has held in paragraph No.14, as under:-*

“It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wagger who does not hold a post and a permanent employee.”

14. *Taking into account that the respondent was granted last drawn wages from the year 2000, under orders of this Court and keeping in view the fact that he is out of employment for last 28 years, an amount of Rs.50,000/- as compensation, in lieu of reinstatement and continuity of service, would be an appropriate relief.*

15. *As such, this petition is partly allowed. The impugned judgment and award, dated 5.4.1994, is modified. The petitioner is directed to pay compensation of Rs.50,000/- (Rs. Fifty Thousand only/-) in lieu of reinstatement and continuity of service to the respondent, besides the wages paid to the respondent under Section 17B of the ID Act.”*

whole issue and remitting the matter back for fresh adjudication to consider the oral termination of the Petitioner dated 01.11.1988 after about 27 years, ends of justice would be met by awarding compensation to the Petitioner in lieu of reinstatement and other benefits.

13 Taking into account the above facts coupled with the fact that the Petitioner has worked for about 23 months, is out of employment for about 27 years and is 57 years old, that I deem it proper, by invoking my extra-ordinary jurisdiction, to quantify compensation of Rs.50,000/- (Rupees Fifty Thousand) in the light of the four judgments delivered by the Apex Court (supra). This amount is beside the amount deposited by the Respondents in the Industrial Court, Aurangabad which can be awarded to the Petitioner.

14 This Writ Petition is, therefore, partly allowed. The impugned judgments of the Industrial Court dated 16.02.2006 and the Labour Court dated 12.07.1991, are modified. The Respondents shall pay an amount of Rs.50,000/- (Rupees Fifty Thousand) to the Petitioner in lieu of the order of reinstatement awarded by the Labour Court, within a period of FOUR WEEKS from today. The Petitioner shall be at liberty to withdraw the amount of Rs.17,472/- with accrued interest, which is deposited by the Respondents before the Industrial Court in Revision (ULP) No.36/2002.

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

(RAVINDRA V. GHUGE, J.)