

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9722 OF 2012

SAMPAT RAJARAM MALI,
AGE-43 YEARS, OCCU-LABOUR,
R/O MULA NAGAR, TALUKA RAHURI,
DIST.AHMEDNAGAR

PETITIONER

VERSUS

MAHATMA PHULE KRUSHI VIDYAPEETH,
RAHURI, TALUKA RAHURI,
DISTRICT : AHMEDNAGAR
THROUGH ITS VICE CHANCELLOR

RESPONDENT

Mr.P.V.Barde, Advocate for the petitioner.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/07/2015

ORAL JUDGMENT :

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

2. The petitioner herein claims to be working on daily wages with the respondent / Agricultural University. It is claimed that he was in continuous service from 1985 till 16/09/1997 when he was orally terminated from employment. Violation of Section 25-F and 25-G of the Industrial Disputes Act, 1947 has been alleged. Names of four

employees are set out in the statement of claim indicating that they are juniors to the petitioner.

3. An industrial dispute in relation to the termination dated 16/09/1997 is raised in 2005. The dispute was referred to the Labour Court and registered as Ref.(IDA) No.10/2005. The termination from 16/09/1997 is alleged to be an illegal retrenchment. Principle of “last come first go” is not followed.

4. Mr.Barde submits that the respondent/University filed its written statement contending that the petitioner himself has left duties and that he was a daily wager. Whenever he used to attend duties, his daily wage was calculated. Having stopped reporting for duties, he had abandoned his engagement.

5. Mr.Barde, therefore, submits that the respondent/Management had taken the plea of abandonment and the said plea amounts to a charge of mis-conduct against the petitioner. He relies upon the judgment of the Apex Court in the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd., and another, AIR 1999 SC 1351 and the judgment of this Court in the case of M/s Ocean Creations Vs.Manohar Gangaram Kamble and the Presiding Officer, 2014(140) FLR 725.

6. Mr.Shelke, learned Advocate appearing on behalf of the respondent/University submits that the petitioner was a daily wager. He was not appointed on any permanent sanctioned post, much less, a vacant post. He used to be allotted duties as a “Majoor”. He did not offer himself for work and as such there was no question of treating him as having been terminated or unauthorizedly absent.

7. Though the Management has used the term “abandonment”, it is only aimed at indicating that the petitioner did not offer himself for work as a “Majoor”. Abandonment can only be said to be in relation to a permanent employee or a Probationer.

8. He submits that though the petitioner has mentioned four names of employees in his statement of claim, he has not led any evidence to establish that either these 4 persons are similarly situated or that they were appointed after the petitioner and were continued or were engaged in the place / vacancy created by the removal of the petitioner.

9. He submits that a seniority list of daily wagers is maintained by the Establishment. However, the absence of the petitioner from 16/09/1997 cannot be said to be an act of termination or retrenchment. The University has specifically denied that there is any termination or

retrenchment of the petitioner w.e.f. 16/09/1997.

10. I have considered the submissions of the learned Advocates and have gone through the record.

11. A chart of the number of days actually worked, for which the petitioner was paid his daily wages, is placed on record by the petitioner, which is marked as "Exhibit X" for identification. From the said chart, it appears that the petitioner had worked for 104 days in 1985, 200 days in 1986, 19 days in 1989, 27 days in 1990, 213 days in 1991, 235 days in 1992, 32 days in 1993, 127 days in 1994, 248 days in 1995, 245 days in 1996 and 18 days in 1997.

12. It cannot be disputed that the petitioner was not appointed or engaged on a permanent vacant post. The Agricultural University has its agricultural activities at various places, for which they engage daily wagers as "Majdoors". After 1986, it is apparent that the petitioner did not work in 1987 and 1988. Plea of termination was not raised in 1987 as is now being raised in 1997 in identical set of facts. He worked for 19 days and 27 days in 1989 and 1990. In 1993, he has worked only for 32 days. If the same analogy is to be applied as like having worked for 18 days in 1997 which is alleged to be a termination, the same could be said of the year 1993.

13. From the above record, it is apparent that whenever such Majdoors offer themselves for work and if the work is available, they have been given the work and have been paid their daily wages.

14. I find that though the respondent/University has alleged that the petitioner has not offered himself on daily wages, terming it to be abandonment, it appears that the said term is mechanically used to indicate that he did not offer himself for work in 1997 besides having worked for only 18 days. If the defence of the University is to be accepted in the literal sense of the term, then, the plea of termination could be raised in relation to 1987, 1988, 1989, 1990 and 1993 going by the meager number of days that he has worked as noted above.

15. In this backdrop, I do not find that the judgment of the Apex Court in the case of Ajaib Singh (supra), which is with reference to the retrenchment of an employee, could be said to be applicable in the instant case. For the same reasons, I do not find that the judgment of this Court in the case of M/s Ocean Creations (supra) could be said to be applicable.

16. In the light of the above, I do not find that the impugned award can be termed as being perverse or erroneous.

17. The petition is devoid of merit and hence dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)