

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

WRIT PETITION NO. 10192 OF 2015

The Deputy Conservator of Forest,
Ahmednagar Forest Division,
Vanbhavan, Nagar Aurangabad Road,
Ahmednagar.

...PETITIONER

-VERSUS-

Ganpat Parbati Gangurde,
Age : 55 years, Occ : Nil,
R/o At Post Kombhali,
Tq.Karjat, District Ahmednagar.

...RESPONDENT

WITH
WRIT PETITION NO.10201 OF 2015

The State of Maharashtra, through
The Deputy Conservator of Forest,
Ahmednagar Division,
Ahmednagar.

...PETITIONER

-VERSUS-

Babasaheb Madhav Gangurde,
Age : Major, Occ : Nil,
R/o At Post Kombhali,
Tq.Karjat, District Ahmednagar.

...RESPONDENT

...

Advocate for Petitioner : Shri Gaddime Arvind N., Special Counsel a/w
Shri D.R.Korde, AGP.

Advocate for Respondents : Shri P.V.Barde.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd December, 2015

Oral Judgment:

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

2 Shri Gaddime, learned Advocate for the Petitioner, has strenuously criticized the impugned judgment and awards delivered by the Labour Court dated 29.03.2014 and 11.09.2012 in Reference (IDA) Nos.23/2007 and 21/2007, respectively.

3 The submission is that the Labour Court has directed the Petitioner to reinstate the Respondents/ Employees with continuity of service, without back-wages. Such awards could not have been delivered by the Labour Court.

4 Shri Gaddime submits that merely because the Respondents worked on daily-wages would not mean that they were entitled for regularization in service. The Labour Court should have seen as to whether, any post is available and as to whether, the order of reinstatement would be implemented by the Employer.

5 He further submits that the Respondents were engaged as and when the work was available. They worked intermittently. They never worked continuously and as such, their removal from service would not amount to illegal retrenchment. As the work was not available, they were not engaged. This was lost sight of by the Labour Court while delivering the impugned awards.

6 Shri Barde, learned Advocate for the Respondents/ Employees, has supported the impugned awards. He points out the chart at Exhibit U-13/3 which was issued by the Range Forest Officer, Mirajgaon. The chart was produced by the Respondents before the Labour Court. It was referred to in the evidence.

7 He further submits that the Management witness Shri Kisan Aglave has deposed on the basis of the chart Exhibit U-13/3 and he admitted that these Respondents were working for more than 300 days in each calendar year for 10 years and for more than 250 days in each calendar year for two years. This admission was considered by the Labour Court in the light of the oral and documentary evidence and it was, therefore, concluded that the Respondents had worked continuously in an uninterrupted service of the Petitioner and therefore, were entitled to the

protection under Sections 25F and 25G of the Industrial Disputes Act, 1947.

8 I have considered the submissions of the learned Advocates as have been recorded herein above.

9 The Apex Court, in the cases of *Mackinnon Mackenzie and Company Limited v/s Mackinnon Employees Union*, (2015) 4 SCC 544 and *Ajaypal Singh v/s Haryana Warehousing Corporation*, 2015(6) SCC 321, has concluded that non compliance of Section 25F of the Industrial Disputes Act, 1947 necessarily leads to a conclusion that the termination amounts to an unlawful retrenchment. The Apex Court, therefore, concluded that in such situation, the relief of reinstatement with continuity is necessarily to be granted.

10 In the instant cases, the Labour Court has, therefore, rightly directed the Petitioners to reinstate the workmen in service with continuity. The back-wages have been deprived by the Labour Court. The Respondents have not challenged the said judgments and awards to the extent of deprivation of back-wages.

11 The compilation of documents is tendered across the Bar by

the learned Advocate for the Petitioner to indicate that the proposal of both the Respondents herein have been forwarded to the appropriate Authority for seeking approval to regularization of their services. The said proposal is marked as Exhibit X for identification. The Respondents are at Sr.Nos.5 and 6. However, the issue is as regards the reinstatement pursuant to the awards of the Labour Court considering the fact that Sections 25F and 25G have been violated by the Petitioner.

12 In the light of the above, both these petitions are dismissed on account of being devoid of merit in the light of the ratio laid down by the Apex Court in the above referred judgments.

13 Insofar as Exhibit X is concerned, the Petitioners are at liberty to deal with the said proposal in accordance with law.

14 Rule is discharged.