

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10721 OF 2015

THE SOCIAL FORESTRY BEED

PETITIONER

VERSUS

NIVRUTTI S/O KISAN SONWANE

RESPONDENT

Mr.S.J.Salgare, AGP for the petitioner/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/10/2015

PER COURT :

1. The petitioner challenges the judgment of the Labour Court dated 21/06/2014 delivered in Ref.(IDA) No.29/2007 by which the petitioner has been directed to pay compensation of Rs.75,000/- in lieu of reinstatement in service with continuity and back wages.

2. The learned AGP has strenuously criticized the impugned judgment and award. He submits that all over the country, there have been different views taken by different High Courts with regard to whether the Department of Social Forestry could be said to be an Industry. He further submits that the Apex Court in the case of State of UP Vs. Jai Bir Singh, [(2005) 5 SCC 1] = [2005(106) FLR 190] has referred the matter to a Larger Bench of the Apex Court. There

has been no ruling on the count as yet.

3. Notwithstanding the above, he submits that the respondent, though has claimed to be working from 01/08/1987 till 31/03/2003, he has actually worked intermittently in between 01/08/1987 and 31/03/2003. Since the petitioner did not produce the documents as directed by the Labour Court, an adverse inference has been drawn and compensation in lieu of reinstatement, continuity and back wages have been granted to the respondent.

4. He, therefore, submits that the impugned award dated 21/06/2014 is unsustainable, perverse and erroneous. The same deserves to be quashed and set aside.

5. I have considered the submissions of the learned AGP and have gone through the petition paper book with his assistance.

6. The petitioner in the very first paragraph of its written statement dated 28/03/2012, filed before the Labour Court, has taken a stand that the respondent worked in between 01/08/1987 till March 2010. He was working whenever the work was available and was offered to him.

7. The petitioner was directed by the Labour Court to produce the muster rolls. The said direction dated 29/10/2013 passed below Exh.U-6 was not complied with. The Labour Court was, therefore, left with no option but to draw an adverse inference.

8. In my view, the Labour Court has rightly considered two factors, which are as follows :

- [a] The respondent was about 57 years old when the impugned award was delivered on 27/01/2014.
- [b] The age of retirement is 58 years.

9. The Labour Court has concluded that it would be fruitless to reinstate the respondent considering his age. Compensation in lieu thereof has been ordered. In my view, the judgment of the Labour Court cannot be faulted in the light of the ratio laid down by the Apex Court in the following 4 cases by which compensation in lieu of reinstatement was held to be sustainable :-

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,*
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327.*

10. Considering the fact situation as above and the ratio laid down by the Apex Court, I do not find any error committed by the Labour Court in directing payment of compensation in clause 3 of the operative part in the impugned judgment and award.

11. This petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)