

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11687 OF 2014

1. The District Manager,

Maharashtra State Co.op.Housing
Finance Corporation Ltd., Mumbai
Office at 'Arth Complex', Adalat road,
Aurangabad,

2. The Managing Director,

Maharashtra State Co.op.Housing
Finance Corporation Ltd., Mumbai
Housefin Bhavan, C-21, 'E Block',
Bandra-Kurla Complex, Mumbai

PETITIONERS

VERSUS

Kaushalya Panditrao Phawade,
R/o Fakirwadi, Diwandeodi,
Aurangabad

RESPONDENT

Mr.A.R.Joshi, Advocate for the petitioners.
Mr.V.P.Golewar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/08/2015

ORAL JUDGMENT :

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

2. The petitioners are aggrieved by the judgment and award delivered by the Labour Court in Ref.(IDA) No.399/2008 dated 18/09/2014, by which the respondent has been granted reinstatement with continuity and back wages.

3. It is stated that the office of the petitioners is housed in a building which contains several offices and shops. The said building is not exclusively in the charge of the petitioners.

4. It is stated that the respondent was a person who used to clean and sweep these offices and shops in the building and used to earn Rs.300/- per month from each of the shop/office keeper.

5. The respondent raised an industrial dispute in 2008 alleging unlawful termination at the hands of the petitioners and claimed reinstatement with continuity and full back wages. The industrial dispute was not resolved between the parties and the appropriate Government by order dated 21/11/2008, referred the dispute to the Labour Court at Aurangabad, which was registered as Ref. (IDA)No.399/2008.

6. The petitioners submit that the work of sweeping the

petitioners' office could at best be stated to be a contractual work considering the fact that the respondent used to sweep several shops and offices in the said building. She could not have survived on Rs.300/- per month as earnings exclusively for and in the service of the petitioners. The evidence adduced by the petitioners before the Labour Court has not been read in its entirety, much less, considered by the Labour Court. Statements in denial are disregarded and solitary statements in the cross-examination are culled out as being admissions given by the petitioners. The voucher payments were considered as an evidence of employer/employee relationship which in fact were preserved by the petitioners since it had to account for every such payment made in cash being the Maharashtra State Co-operative Housing Finance Corporation Ltd..

7. It is further submitted that the petitioners, being a limb of the State, could not create posts on which the respondent could be absorbed or continued. There was no proper selection process followed by the petitioners vide which the respondent could be said to have been selected and appointed as a Sweeper at the Branch Office. It is, therefore, submitted that the judgment of the Labour Court is perverse and deserves to be quashed and set aside.

8. Mr.Golewar, learned Advocate on behalf of the respondent has strenuously opposed this petition. He submits that though the petitioners have canvassed a host of factors, no evidence was adduced before the Labour Court to substantiate the contention that the respondent was working in several offices and shops and was earning Rs.300/- per month from each of such offices and shops.

9. He further submits that the payment vouchers indicated continuous service of the respondent for the period 1990 till 2000. The applications placed on record indicated that the respondent had requested the petitioners to enhance her monthly wages. Since she was orally terminated from 16/09/2002, the respondent was left with no option but to raise an industrial dispute. He, therefore, prays that this petition be dismissed with costs.

10. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

11. It is undisputed that the local office of the petitioners at Aurangabad cannot create posts. The respondent was working as a “Sweeper” and claimed to be a “Sweeper cum Peon” with the petitioners. The level of education of the petitioners has not been

disclosed in the proceedings before the Labour Court. Admittedly, the respondent had not applied pursuant to any advertisement seeking appointment to the purported post of “Sweeper cum Peon”. It is also not disputed that the office of the petitioners is situated in a building which houses commercial establishments and shops/offices.

12. The respondent has led oral evidence and has produced payment vouchers and four applications filed in between 1993 to 1995. In order to conclude that the oral termination would amount to an illegal retrenchment, the burden lay on the respondent to prove that she was working in the continuous and uninterrupted service of the petitioners in 12 calendar months preceding the date of her alleged oral termination 16/09/2002.

13. I have considered the reasons assigned by the Labour Court. Neither was any appointment order placed on record nor was the daily attendance of the respondent proved before the Labour Court. There is no evidence as regards her daily wages prescribed and paid by the petitioner Corporation. The Labour Court has relied upon two more applications dated 04/10/2000 and 14/11/2000 by which the respondent had claimed unpaid wages for four months. No notice for production of any attendance record was served upon the

petitioners by the respondents.

14. Considering the totality of the evidence before the Labour Court, I am of the view that the Labour Court could not have concluded that the respondent was working continuously and in the uninterrupted service of the petitioner/Corporation preceding the date of reference.

15. It is evident that the petitioner is a limb of the State. It is equally evident that the respondent is not in employment for the last 13 years. There has been no evidence before the Labour Court to prove that the petitioners had a vacant post of "Sweeper cum Peon" so as to reinstate the respondent on the said post thereby making her eligible for all service benefits available to the employees working with the petitioner Corporation. I am, therefore, unable to accept the contention of the respondent that the impugned judgment deserves to be sustained.

16. The Labour Court has granted back wages to the respondent on an unknown principle "grant of back wages is a general rule and refusal is an exception". The Labour Court lost sight of the fact that unless an employee brings evidence on record to indicate that the

said employee made an effort to seek alternate employment, was not successful in securing such employment and continued to be unemployed and without any earnings, back wages could not be granted.

17. The Labour Court has concluded that the respondent comes from a poor family, she is illiterate and she is not gainfully employed. The Court, therefore, granted back wages by further concluding that the petitioners shall pay such back wages not at the rate of Rs.300/- per month, but in accordance with the provisions of law. Despite the strenuous efforts of Mr.Golewar, I am unable to agree with the conclusions of the Labour Court.

18. Notwithstanding the above, the impugned award is in favour of the respondent. She has been out of employment for the last 13 years. Considering the situation, I am inclined to award compensation to the respondent by following the view taken by the Apex Court in the following four cases :-

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.*

19. Considering the monthly wages earned by the respondent @ Rs.300/- per month and the fact that she has been out of employment for 13 years, I find that an amount of Rs.1,00,000/- by way of compensation in lieu of the reinstatement with continuity of service and back wages granted by the Labour Court, would be reasonable.

20. In the result, this petition is partly allowed. The impugned award is modified and replaced by a direction to the petitioners to pay the respondent compensation of Rs.1,00,000/- (Rs. One lac only).

21. Since the petitioners have deposited Rs.21,990/- on 31/01/2015 in this Court, the respondent shall be entitled to receive the said amount alongwith accrued interest which she shall withdraw by producing tangible evidence by way of identity proof and without conditions. The petitioners shall, therefore, pay an amount of Rs.78,000/-, within a period of 8 (eight) weeks from today, failing which the said amount shall carry interest @ 6% p.a. from the date of the award 18/09/2014 till actual payment of the said compensation.

22. Since Mr.Golewar, learned Advocate has been appointed by this Court, his fees are quantified at Rs.7,500/- (Rs.Seven thousand five hundred only). It shall be paid by the High Court Legal Services Sub Committee, Aurangabad,

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

(RAVINDRA V. GHUGE, J.)