

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

LETTERS PATENT APPEAL NO. 12 OF 2011

IN

WRIT PETITION NO. 3278 OF 1995

AND

WRIT PETITION NO. 4037 OF 1995

Shri Nana Genu Bansode
(Deceased through LR's)

Mrs. Sunderbai w/o Nana Bansode
aged 53 years, r/o at post Khirdi
Tq. Shrirampur
Dist. Ahmednagar.

.. APPELLANT

VERSUS

Dy. Engineer
Pravara Left Canal,
Sub-Division, Shrirampur
Command Area Development Authority,
Fakirwada, Ahmednagar.

.. RESPONDENT

Mr. U.S. Sawji, advocate holding for Mr. T.K. Prabhakaran, advocate for
appellant.

Mr. S.G. Karlekar, AGP for the State.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.**

DATE : 20th JULY, 2015

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Admit. With the consent of the parties, appeal is taken up for final disposal at admission stage.
3. Appellant contends that he was serving as a daily rated majdoor with respondent since 1982-1983. The employer refused to allot him work

though the same was available and, he was illegally and improperly terminated since 28.08.1988. Appellant tendered application raising his grievance with the Commissioner of Labour. The Commissioner of Labour, on noticing that conciliation is not possible, referred the matter to the Labour Court for adjudication. Learned Judge of the Labour Court, after observing procedure prescribed under law, allowed the reference and directed the employer to reinstate the employee without any backwages and without continuity of service. The order passed by the Presiding Officer and Judge, Labour Court, was subject matter of challenge at the instance of the employer in Writ Petition No. 4037/1995. Writ petition presented by the employer alongwith other group of petitions was placed for hearing and disposal before the learned Single Judge which came to be disposed of by the learned Single Judge on 16.07.2009. Writ petitions were allowed and the orders impugned came to be quashed. Learned counsel for appellant contends that the group of petitions taken up for consideration by the learned Single Judge relates to employees who were functioning as Mustering Assistants and were engaged to perform work under Employment Guarantee Scheme. It is contended that appellant does not fall in the category of mustering assistants and as such, it was erroneous on the part of the learned Single Judge to take up the petition presented by the employer for consideration alongwith other matters. This fact was pointed out to the learned Single Judge by presenting Civil Application no. 15276/2010. However, the learned Single Judge, referring to the communication issued by the Sub-Divisional officer, Irrigation Department (marked 'X'), was pleased to dispose of the application. It is pointed out by

learned counsel for appellant that in identical circumstances in Civil Application No. 12379/2009, the learned Single Judge has caused interference and directed restoration of writ petition. However, the learned Single Judge proceeded to reject the application presented by appellant in the instant matter.

4. It is noticed that infact the appellant was not functioning as Mustering Assistant and was appointed as daily rated majdoor by the employer. The case of appellant is not identical with the matters presented by the mustering assistants which were taken up for consideration by the learned Single Judge. The learned Single Judge has committed error apparent on the face of record in rejecting the application tendered by the appellant. We are of the view that the order passed by the learned Single Judge in Civil Application no. 15276/2010 as well as in Writ Petition No. 4037/1995 deserves to be quashed and set aside and the same is accordingly quashed and set aside. Civil application shall be deemed to have been allowed and, Writ Petition no. 4037/1995 shall be restored to its original number. It would be open for the appellant to make request to the learned Single Judge dealing with writ petitions to take up the matter for consideration at the earliest. Appeal is thus allowed. In the facts and circumstances of the case, there shall be no order as to costs.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE