

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

WRIT PETITION NO.4464 of 1995

Executive Engineer,
Public Works, Sangmner,
Tq. Sangamner, Dist. Ahemadnagar.

...PETITIONER

VERSUS

Salukram Eknath Rakate,
Deceased, through his L.Rs.

- 1-A Smt.Chhaya w/o Salunkram Rakate,
 Age 41 yrs., Occu: Nil.
- 1-B. Kum.Dipali d/o Salukram Rakate,
 Age 14 yrs. Occu: Education.
- 1-C. Ku.Chandrakala D/o Salukram Rakte,
 Age 14 yrs. Occu: Education.
- 1-D. Kum.Sarala D/o Salukram Rakte
 Age 9 yrs. Occu. Education.

No.1-B to 1-D are minor, through
their Minor Guardian: Mother i.e.
1-A.

All R/o. Dhangarwadi, Post: Wakadi,
Tal.Rahata, Dist. Ahmednagar.

(L.Rs. brought on record as per
Registrar's (Judl) order dated 12.1.2009
passed in C.A.No.13436/2008/)

...RESPONDENTS

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Shri S.W.Munde, AGP for petitioner State.
Mr.N.C.Garud, Advocate, for respondent
(sole).

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CORAM: P.R.BORA, J.

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Date of reserving the judgment: 24.6.2016

Date of pronouncing the judgment:13.7.2016

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JUDGMENT:

1. The present petition is filed against the award passed by the second Labour Court at Ahmednagar, on 28.4.1995, in Reference (IDA) No.28/1990, whereby the respondent (now deceased) was directed to be reinstated with full backwages and continuity of service w.e.f. 4.5.1986. By the order dated 18.9.1995, Rule and interim relief in terms of prayer clause C was granted by this Court. Vide prayer clause C, the petitioner had prayed for stay to the operation of the impugned order dated 28.4.1995.

2. The present petitioner had raised a dispute before the Deputy Commissioner of Labour, Nashik

Division, Nashik, in regard to his alleged termination by the present petitioner w.e.f. 4.5.1986 whereupon the Deputy Commissioner of Labour made a Reference under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act') and forwarded it for adjudication to the Labour Court at Ahmednagar, in the year 1990.

3. In the aforesaid Reference, it was the contention of the respondent employee that though he had continuously worked with the present petitioner from the year 1979 till 4th of May, 1986, and had worked for more than 240 days in one calendar year in all the preceding years, his services were abruptly terminated without following due procedure of law as provided under the ID Act. It was the specific contention of the respondent employee that he was not served with any notice before his alleged termination nor any retrenchment compensation was paid to him. It was his further contention that the persons junior to him were retained in service and thus his termination was in violation of Sections 25-F and 25-G of the ID Act. The respondent

employee had, therefore, prayed for the relief of reinstatement with continuity of service and backwages.

4. As against the contentions raised by the respondent employee, noted hereinabove, it was the contention of the petitioner before the Labour Court that the respondent employee had never worked continuously with the establishment and had also never worked for more than 240 days in any calendar year prior to his alleged termination. It was the further contention of the petitioner establishment that the respondent employee was provided with the work on the principle of 'as and when available' and he was thus a temporary employee appointed on daily wages. It was further contended by the petitioner establishment that from 4.5.1986 the respondent employee himself had stopped coming to the work and has abandoned his services voluntarily and, as such, there was no question of terminating his services.

5. During the course of hearing of the Reference Application, oral and documentary evidence was adduced by both the sides to the said Reference. Respondent

employee himself had deposed before the Labour Court whereas Shri Rajendra Pandurang Targe was examined by the petitioner establishment as their witness. The learned Labour Court on its assessment of the oral and documentary evidence brought before it allowed the Reference Application and directed the present petitioner to reinstate the respondent employee with full backwages and continuity of service w.e.f. 4.5.1986. As mentioned above, the said order is impugned in the present petition.

6. Shri Munde, learned A.G.P. has assailed the impugned award on various grounds. Learned A.G.P. submitted that the Labour Court has failed in appreciating that considering the nature of work being performed by the respondent employee, the provisions of the ID Act could not have been applied in his case. Learned A.G.P. submitted that the respondent employee was provided with the work on daily wages and on the principle of 'as and when available'. Learned A.G.P. further submitted that there was no scheme or any criteria in respect of allotment of the work to the daily wagers. Learned A.G.P. further submitted that on the availability of work, whoever

used to be available on the site, used to be provided with the work and as such, there was no reason for maintaining the seniority list as such. Learned A.G.P. further submitted that it was the specific contention of the petitioner establishment before the Labour Court that the respondent employee had never worked continuously with the petitioner establishment and had not worked for 240 days in any calendar year preceding the date of his alleged termination. Learned A.G.P. submitted that available record was produced on record by the petitioner establishment which was clearly showing that the petitioner had not continuously worked and had not worked for more than 240 days in any calendar year. Learned A.G.P. further submitted that an objection was also raised by the petitioner establishment in regard to the delay which has occurred on the part of the respondent employee in raising the industrial dispute, thereby dis-entitling him from claiming any relief, however, the Labour Court has rejected the said contention for erroneous reasons.

7. Shri N.C.Garud, learned Counsel appearing for the respondent employee supported the impugned award. Learned Counsel submitted that the respondent employee had sufficiently proved that he was in continuous employment of the petitioner establishment and that before his alleged termination, he had worked for more than 240 days in every calendar year. Learned Counsel further submitted that the respondent employee had also proved that the workers junior to him, namely, Govind Santur Rakte and Bansi Shankar Lande were retained and his services were terminated by the petitioner establishment. Learned Counsel further submitted that in his cross examination, the witness examined by the petitioner establishment had clearly admitted the aforesaid facts. Learned Counsel further contended that the Labour Court has recorded an unambiguous finding that the petitioner establishment had violated the provisions of Sections 25G and 25H of the ID Act while terminating the services of the respondent employee. Learned Counsel further submitted that the Labour Court has passed a well reasoned order and no interference is required in the order so passed. In the -

alternative, it was argued by the learned Counsel that if the Court reaches to the conclusion that the relief of reinstatement may not be possible to be maintained because of long lapse of time, the respondent employee shall be compensated by directing the petitioner to pay the respondent employee adequate compensation. In order to substantiate his alternate prayer, learned Counsel relied on the judgment of this Court in *Writ Petition No.2606/2003 (The State of Maharashtra Vs. Devidas Machharam Chavan)*, dated 14th March, 2016. Learned Counsel submitted that the learned Single Judge of this Court in the aforesaid matter, relying on the Supreme Court judgments referred to in the said judgment, has awarded the compensation in similar circumstances.

8. It is apparent from the evidence before the Labour Court, which has been extensively discussed in the impugned judgment that relying on some averments in the written statement filed by the petitioner establishment and some admissions given by the witness examined by the petitioner establishment in his cross examination, despite there being any concrete evidence brought on record by

the respondent employee in regard to his contentions that he had continuously worked during the period from 1979 to 4.5.1986 and that during the said period in every calendar year he had worked for more than 240 days and further that while terminating his services, juniors were retained in services, the Labour Court has allowed the Reference and directed reinstatement of the respondent employee with continuity of service and with full backwages.

9. Perusal of the impugned judgment reveals that the Labour Court has not addressed to the other objections raised by the petitioner establishment as regards to the applicability of the provisions of the ID Act to the case of the respondent employee. It was the specific contention of the petitioner establishment that there was no scheme or any criteria in respect of allotment of the work to the workers employed on daily wages. It was the further contention of the petitioner establishment that such work used to be provided as and when available to the workers who used to be available on the site at the relevant time. In the circumstances, according to the petitioner

establishment, there was no need for maintaining any seniority list of such workers. It was specifically contended that such appointments were of a very temporary nature and used to be made without following any procedure. The Labour Court has, admittedly, not considered these objections. However, after lapse of 21 years, according to me, it will be a futile exercise to go into all those issues which, for the present case, would be merely academic in view of the fact that the respondent employee has expired during the pendency of the present petition and his legal heirs are prosecuting the cause further.

10. From the evidence which was brought before the Labour Court, even if controversies are kept aside, there is reason to believe that the respondent employee had worked with the petitioner establishment for the period of about five years. As has been held by the Honourable Apex Court in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh ((2013) 5 SCC 136), before exercising its -

judicial discretion under Section 11-A of the ID Act, the Labour Court has to keep in view all relevant factors, including mode and manner of appointment, nature of employment and length of service. The Honourable Supreme Court has further observed that a distinction has to be drawn between a daily wager and an employee holding regular post for the purposes of consequential relief. The Honourable Apex Court has further held that even if the termination of a daily wager is held wrongful, who had worked for some period, the award of reinstatement would not be a proper relief, and rather, award of compensation, in such cases, would be in consonance with the demand of justice.

11. Having regard to the law laid down in the aforesaid judgment, the petition is partly allowed. The impugned judgment dated 28.4.1995 shall stand modified with a direction to the petitioner to pay Rs.1,00,000/- (Rs. one lac) as compensation to the legal heirs of the deceased worker within a period of six months from today, failing which the said amount shall carry interest at the

rate of 9 per cent per annum from the date of this order till the actual payment of the said amount of compensation.

No order as to costs. Rule made partly absolute.

(P.R.BORA)
JUDGE

AGP/4464-95wp ...