

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

WRIT PETITION NO. 2578 OF 1995

Narayan Bhimrao Nikam

Age: 30 years, Occu: Mustering Assistant,

R/o Adgaon, Post Jehur,

Tq. Kannad, Dist. Aurangabad.

..PETITIONER

VERSUS

1. The Deputy Engineer,
PWD Sub-Division (E.G.S.),
Kannad, Dist. Aurangabad.

2. The State of Maharashtra
Through Government Pleader Office,
High Court Building, Aurangabad.

..RESPONDENTS

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Mr. V.B. Jagtap, Advocate holding for Mr. V.D. Sapkal, Advocate for petitioner.

Mr. D.V. Tele, AGP for Respondents.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th FEBRUARY, 2016

ORAL JUDGMENT :

1. This petition was admitted on 15.6.1995 and interim relief was granted.

2. Mr. Vijay Jagtap, learned Counsel appearing for the petitioner has seriously criticised the impugned judgment and award dated 15.07.1994 delivered by the Labour Court, Aurangabad by which his Reference IDA No. 86/1993 was partly allowed and he was deprived of back wages.

3. Mr. Jagtap submits that he was appointed on 07.12.1984 by an order issued by the respondent as a Mustering Assistant. He worked at several places. Eventually, he was orally terminated from services on 31.08.1986 after working for about 20 months. The petitioner raised an industrial dispute in 1993 and Reference IDA No. 86/1993 was before the Labour Court for adjudication.

4. Mr. Jagtap submits that despite the Labour Court having concluded that he was unlawfully terminated and his termination amounts to an illegal retrenchment, he was deprived of back wages only on the ground that he had delayedly raised an industrial dispute. His contention is that once the termination is held to be bad in law, back wages have to be naturally granted while

awarding reinstatement with continuity of service. No proper reasons are assigned by the Labour Court while depriving the petitioner of back wages.

5. He submits that he has already been reinstated in employment. The judgment impugned to the extent of denial of back wages, has not been challenged by the respondent in this Court and the petitioner has worked continuously.

6. The learned AGP has opposed the petition. His submission is that merely because the termination is set aside, would not amount to granting back wages as a matter of course. The petitioner has to make a claim for back wages and has to convince the Court. He therefore submits that this petition be dismissed with costs.

7. I have considered the submissions of the learned Counsel.

8. The only issue for my consideration is as to whether the petitioner deserves to be granted back wages. It is trite law that the

claimant has to lead evidence to the effect that he is not gainfully employed, he has made a serious attempt for obtaining alternate employment and despite his attempts, he was unable to secure an alternate employment.

9. I find from the case in hand that the petitioner has not led evidence to the extent of being unemployed, making an attempt to secure alternate employment and being unable to obtain alternate employment despite his best efforts. In the absence of any evidence on record, coupled with the fact that the industrial dispute was raised by the petitioner after 7 years, naturally led the Labour Court to deprive the petitioner of the back wages. I do not find that the impugned award can be termed as perverse or erroneous.

10. This petition being devoid of merit is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)