

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3496 OF 1995

Santosh Lalchand Shirsath @ Koli,
Age-Major, Occu-NIL, R/o Galangi,
Post : Velode, Tq.Chopda, Dist. Jalgaon

PETITIONER

VERSUS

The Executive Engineer,
Public Works Department (North Division)
Jalgaon

RESPONDENT

Mr.A.S.Shelke, Advocate for the petitioner.
Mr.S.W.Munde, AGP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/08/2016

PER COURT :

1. The petitioner is aggrieved by the judgment and award dated 26/08/1994 delivered by the Labour Court, Jalgaon by which Ref. (IDA) No.1/1989 has been rejected.

2. I have heard Mr.Shelke, learned Advocate for the petitioner and learned AGP on behalf of the respondent at length.

3. In the light of the submissions of the learned Advocates, I have gone through the record available and the impugned award. Though the petitioner had claimed to be working as a "Mail Mazdoor" since

1977 till his oral termination on 25/03/1984, there was no evidence before the Labour Court, which could establish this fact, except the chart Exhibit C-11 produced by the respondent/employer.

4. Upon considering the pleadings and especially Exh.C-11, I find that the petitioner had worked for 275 days from 23/03/1983 upto 22/03/1984. It is settled law that an employee, in order to derive protection of Section 25-B and 25-F of the Industrial Disputes Act, 1947 in order to prove illegal retrenchment, has to establish that he had worked continuously for 240 days in a calendar year preceding the date of reference which, in this case, is the date of termination. The respondent/employer has taken a specific stand in its written statement Exhibit C-7 that the petitioner himself stopped reporting for duties from 25/03/1984 since he was involved in a Crime No.132/1984 under Sections 504 and 506 of the Indian Penal Code. As such, it can be construed to mean that the petitioner was not in employment from 25/03/1984.

5. The Labour Court has concluded that there is no evidence on record to arrive at a finding that the petitioner had completed 240 days in continuous employment. Exhibit C-11 indicates a chart which is signed by the Sub-Divisional Engineer, P.W.D. Yawal. Based

on the chart produced by the respondent/employer, it is apparent that the petitioner had worked for 275 days in between 23/03/1983 upto 22/03/1984. The Labour Court could not have overlooked this piece of evidence since it is settled law that the employee can prove completion of 240 days over a period of 12 calendar months. The impugned award, therefore, needs to be modified to the extent that the petitioner had worked for 240 days in a calendar year preceding the date of termination.

6. Despite the above, it cannot be overlooked that the petitioner is now out of employment for 32 years after having worked for 12 calendar months. The Hon'ble Supreme Court has concluded in the following four cases that where a short tenure of employment is followed by a long span of unemployment, compensation @ Rs.30,000/- per year of service put in, would be appropriate and practicable in lieu of reinstatement with continuity and back wages :-

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

7. Considering the above, this petition is partly allowed. The impugned award dated 26/08/1994 is partly modified by replacing the same with a direction to the respondent/employer to pay an amount of Rs.30,000/- as a compensation to the petitioner within a period of 12 (twelve) weeks from today. The reference is, therefore, partly allowed by this direction.

8. Needless to state, failure on the part of the respondent to pay the compensation within the time frame, would result in grant of simple interest @ 3% p.a. from the date of the award which is 26/08/1994 till actual payment.

9. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)