

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3601 OF 1995

The State of Maharashtra
through Sub Divisional Engineer,
Irrigation Sub Division, Chalisgaon
No.1, Tq. Chalisgaon, District Jalgaon. ..Petitioner

Versus

1. Suryabhan Pundlik Khalane
C/o Devidas Bandarde,
Sarva Sharmik Sangh,
Nayayan Wadi, Chalisgaon,
District Jalgaon.

2. The learned Presiding Officer,
Labour Court, Jalgaon. ..Respondents

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Advocate for Petitioner : Shri D.R.Shelke & Smt. S.D.Shelke
Advocate for Respondent 1 : Shri Ashutosh Kulkarni

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 28, 2016
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ORAL JUDGMENT :-

1. The petitioner challenges the judgment and award dated 17.12.1994 by which, the Labour Court, Jalgaon has allowed Reference (IDA) No.24 of 1993 and has directed the petitioner to reinstate the respondents in service with continuity and full backwages w.e.f. 8.1.1990, except backwages for the period 8.1.1990 to 31.10.1991.

2. I have considered the submissions of the learned Advocates for

the respective sides at length.

3. There is no dispute that, in between 1.12.1988 and 8.1.1990, the respondent / workman was working as a Daily Wager at the Sub-division Chalisgaon No.1. There is also no dispute that the petitioner did not file its written statement and did not lead any evidence before the Labour Court to dispute the contentions of the workman. It is equally undisputed that the award delivered by the Labour Court is based only on the conclusion arrived at in paragraph No.4 that, “Therefore, this Court thinks it just and proper, not to hesitate itself to accede to and take it has read and recorded contention as mentioned therein in the form of affidavit i.e. only one place of affidavit of course this Court takes cursory glance before it conclude its findings supported with the reasons and if there any delay caused in approaching with the appropriate conciliation officer by the II party workman.”

4. This Court by order dated 29.8.1997, admitted this petition and granted interim relief in terms of prayer clause (D), which reads as under:-

“ (D) Pending hearing and final disposal of this writ petition, stay may kindly be granted to the execution of the judgment and award passed by he learned respondent No.2 in Ref. (IDA) No.24 of 1993, dated 17.12.94.”

5. Consequentially, the respondent / employee is out of employment. It is brought to my notice that an application under Section 17B of the Industrial Disputes Act, 1947 seeking last drawn wages during the pendency of this petition, had not been filed by the respondent.

6. The petitioner relies upon the judgment of the Honourable Supreme Court in the matter of M.P.State Agro Industries Development and another Vs. S.C.Pandey [(2006) 2 SCC 716], to contend that the workman has to prove the completion of 240 days.

7. The respondent has placed reliance upon the judgment of the Honourable Supreme Court in the matter of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136] and BSNL Vs. Bhurumal [(2014) 7 SCC 177], praying for compensation or backwages.

8. In the facts of the case, I deem it proper to place reliance upon the following four judgments:-

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] (supra)*

3. *BSNL Vs. Man Singh [(2012) 1 SCC 558] and*

4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].*

9. In the above four judgments, the Honourable Supreme Court has concluded that in cases of short tenure of employment which are followed by long spell of unemployment, it would be inappropriate and impracticable to award reinstatement with continuity and backwages. Quantum of compensation, approximately, at the rate of Rs.30,000/- per year of service, has been held to be just and proper.

10. In the instant case, there has been no evidence before the Labour Court, except the affidavit filed by the respondent in lieu of examination in chief, to conclude that he had worked for 240 days in the continuous and uninterrupted service in each year for a period of two years. So also, had the respondent filed an application under Section 17-B, he would have been entitled for monthly last drawn wages till the disposal of this petition.

11. Keeping in view these aspects, I am inclined to quantify compensation of Rs.60,000/- to the respondent in lieu of

reinstatement, continuity and backwages.

12. This petition is, therefore, partly allowed. The impugned award dated 17.12.1994 is modified by directing the petitioner to pay compensation of Rs.60,000/- (Rs. Sixty Thousand only/-) to the respondent within a period of twelve weeks from today, failing which the said amount shall carry interest at the rate of 3% p.a. from the date of the impugned award dated 17.12.1984.

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

(RAVINDRA V. GHUGE, J.)

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akl/d