

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

WRIT PETITION NO. 5140 OF 1995

- 1 Executive Engineer,  
Public Works Division,  
Ahmednagar.
- 2 Sub Divisional Engineer,  
Public Works Sub Division,  
Shevgaon, Dist.Ahmednagar.

...PETITIONERS

-VERSUS-

Shri Ashok Bajirao Gaikwad,  
At Post Tajnapur, Tq.Shevgaon,  
Dist.Ahmednagar.

...RESPONDENT

...  
AGP for Petitioners/ State : Shri P.N.Kutti.  
Advocate for Respondent : Smt.Renuka Palve.  
...

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 29<sup>th</sup> September, 2016**

Oral Judgment :

1           The Petitioners are aggrieved by the award dated 04.01.1995  
by which Reference (IDA) No.56/1989 has been allowed and the  
Petitioners are directed to reinstate the Respondent in service with  
continuity and full back wages.

2           The learned AGP on behalf of the Petitioners has criticized the impugned award. He contends that the Respondent was working on Employment Guarantee Scheme (EGS). An employee working on EGS has no right to seek reinstatement or continued employment. This Court has held, time and again, that employees working on EGS cannot approach the Labour or Industrial Court under the MRTU & PULP Act, 1971 or under the Industrial Disputes Act, 1947 for claiming reliefs in connection with their employment.

3           Smt.Palve, learned Advocate for the Respondent/ Employee, has supported the impugned award. She contends that the Respondent had worked continuously and was in uninterrupted service of the Petitioner from 29.03.1983 upto 23.06.1986. Section 25F of the Industrial Disputes Act, 1947 was violated while terminating the service of the Respondent. The documents on record indicate that the Respondent was working continuously for three years.

4           It is further submitted that this Court has stayed the award on the condition that 50% of the back wages would be deposited in this Court. The Petitioners have deposited Rs.72,792/- and the Respondent has withdrawn Rs.50,000/-. She further submits that this petition deserves to be dismissed and the Respondent deserves to be granted continuity in

service and the back wages as have been granted by the Labour Court.

5            Having considered the submissions of the learned Advocates, I have gone through the petition paper book.

6            The Petitioners have consistently contended that the Respondent was working on EGS. The Written Statement at Exhibit C-7 puts forth the said contention. The Labour Court has perused the documents placed on record. The Petitioners had canvassed on the basis of the documents at Exhibits C-12, C-13, C-14, C-15 and C-17 that the Tahasildar, Shevgaon had appointed the Respondent. The Executive Engineer, PWD, had not appointed him. Exhibit C-14 was the joining report of the Respondent which clearly indicates that he was working under the EGS.

7            It was on the basis of the documents produced by the Petitioners that the Labour Court concluded that the Respondent has completed 240 days in each calender year of service. When the Respondent as well as the Labour Court relied upon the documents produced by the Petitioners, the Labour Court should have considered the total effect of the said documentary evidence coupled with the oral evidence on record.

8           If the Tahasildar, Shevgaon had appointed the Respondent, it was apparent that he was appointed under EGS which is implemented by the District Collectorate. In my view, the Labour Court could not have ignored this aspect when these documents pointed towards the employment of the Respondent being on EGS. The impugned award, therefore, indicates non application of mind and deserves to be quashed and set aside.

9           Be that as it may, it needs to be considered that after this petition was filed in October, 1995, the Respondent was entitled to the benefits of Section 17B of the Industrial Disputes Act, 1947 though such an application was not filed. The last drawn wages of the Respondent in June, 1986 are said to be in between Rs.12/- to Rs.15/- per day. The wages under Section 17-B would be about Rs.80,000/-. So also, if it is taken into account that the Respondent had worked for about three years, he would be entitled to an amount of Rs.90,000/- as compensation for having put in three years in service, in the light of the ratio laid down by the Honourable Supreme Court in the following four cases:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*
- (b) *Assistant Engineer, Rajasthan Development Corporation and*

*another Vs. Gitam Singh, [(2013) 5 SCC 136];*

(c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558]; and*

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

10           It, however, cannot be ignored that this Court has settled the issue that workers working on EGS, cannot make claims of reinstatement or continued employment, considering the fact that the EGS is a benevolent scheme. As such, I do not find it appropriate to grant quantified compensation to the Respondent in the light of the ratio laid down by the Honourable Apex Court in the above four cases.

11           The benefits of Section 17B, however, would always be available to the employee. It is apparent that the Respondent was not advised to file an application for claiming the benefits under Section 17B. The Respondent is in litigation for about 25 years. Considering that Section 17B wages from the date of filing of this petition would be roughly about Rs.80,000/-, I am inclined to permit the Respondent to withdraw Rs.30,000/- from this Court in the light of the fact that the Petitioners have deposited Rs.72,792/- in 1996 and the Respondent has already withdrawn Rs.50,000/-.

12           As such, this Writ Petition is partly allowed. The impugned award dated dated 04.01.1995 is quashed and set aside and Reference (IDA) No.56/1989 stands rejected.

13           However, the Respondent shall withdraw Rs.30,000/- (Rupees Thirty Thousand) from this Court as noted above by tendering tangible evidence of identity in the form of the Election Commission of India's Voters Identity Card and an application duly signed and identified by the learned Advocate. Considering the accrued interest after withdrawal of Rs.30,000/-, rest of the amount shall be withdrawn by the Petitioners.

14           Rule is made partly absolute in the above terms.

*kps*

**(RAVINDRA V. GHUGE, J.)**