

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

WRIT PETITION NO. 4722 OF 1995

The Deputy Engineer,
Zilla Parishad Construction
Sub Division, Kallam,
Taluka Kallam, District Osmanabad.

...PETITIONER

-VERSUS-

1 Dattu s/o Dagdu Rasal,
Age : 24 years,
R/o Pangaon, Tq.Kallam,
District Osmanabad.

2 The Tahsildar Office,
Kallam.

...RESPONDENTS

...
Advocate for Petitioner : Shri K.J.Ghute Patil.
None for Respondent No.1.
AGP for Respondent 2 : Shri S.W.Munde.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th August, 2016

Oral Judgment :

1 Shri Ghute Patil, learned Advocate for the Petitioner/
Establishment, tenders across the Bar a document running into three
pages, which is taken on record and marked as "X" for identification.

2 It is submitted that as the Petitioner/ Zilla Parishad has prepared a new panel of Advocates and since Shri Ghute Patil is not in the said panel, he has communicated to the Zilla Parishad on 06.06.2016 to take away all the files immediately and handover the same to any Advocate on the panel. By communication dated 01.07.2016, the Petitioner informed Shri Ghute Patil that they are collecting the files.

3 Despite the above, no Advocate has appeared for the Petitioner. None appears for Respondent No.1 though the matter was adjourned on 11.08.2016. The learned AGP appears for Respondent No.2.

4 Rather than dismissing the petition in default, I am considering the same on its own merits.

5 After going through the impugned judgment and the petition paper book, it is apparent that Respondent No.1 had preferred Complaint (ULP) No.260/1988 before the Industrial Court alleging that he has been terminated on 25.05.1987. The complaint was filed practically after one year of his termination. It is specifically contended that Section 25-F of the Industrial Disputes Act, 1947 was not complied with and therefore, the termination amounts to an illegal retrenchment and is bad in law. Violation of Section 25-H was also alleged.

6 Sections 4 to 7 of the MRTU & PULP Act, 1971 define the Labour Court and the Industrial Court. They define the powers of both these Courts. Any cause of action as like termination, discharge, dismissal, removal, retrenchment or oral termination including the proposed termination in the light of the judgment of the Honourable Supreme Court in the matter of *Hindustan Lever v/s Ashok Vishnu Kate*, **1995(6) SCC 326** (see paragraphs 53 and 54), can be entertained by the Labour Court under Item-1 of Schedule IV of the MRTU & PULP Act, 1971.

7 This Court, in the matter of *Engineering Employees Union vs. Devidayal Rolling & Refineries Private Limited*, **1986 Mh.L.J. 331 : 1986 (2) Bom.C.R. 246**, has held that the Industrial Court can exercise jurisdiction under Schedules II, III and Items 2 to 10 of Schedule IV of the MRTU & PULP Act, 1971 and the cause of action of termination or an alike action would not be entertained by the Industrial Court.

8 As such, the Industrial Court could not have entertained Complaint (ULP) No.260/1988. Nevertheless, since this matter has been admitted, I find it appropriate to pass an equitable order.

9 This Court, while hearing this petition along with a group of

petitions posing similar causes of action, has passed an order on 19.02.1998 which reads as under:-

“This is a group of petitions filed either by the State Government Departments or by the employees aggrieved by the orders passed against them regarding termination, discontinuation, refusal to grant permanency benefits and so on. The employees involved in all these petitions were working as Muster Assistants under the Employment Guarantee Scheme, admittedly.

The Government of Maharashtra has announced a scheme for the absorption/regularization of services of Muster Assistants on 01.12.1995 and the said scheme has been approved by the Supreme Court by its order dated 02.12.1996 in Civil Appeal No.25339 of 1996. A copy of the said scheme and the order passed by the Supreme Court are brought on record by the learned Assistant Government Pleader. There is also no dispute that most of the employees in these petitions are presently out of employment.

Rule. Expedited.

For considering interim relief, it is directed that the respective State Government Departments/authorities, who are parties in this group of petitions should examine the cases of the employees who are either petitioners or respondents in these petitions and who are presently out of employment so as to grant them benefits of the scheme announced on 01.12.1995 and in case any of such employees are found to be eligible for the benefits of the scheme, a report to that effect be submitted to this Court by the respective authorities. This exercise should be completed by the State authorities in each case within a period of three months from today.

Stand over to 17th of June, 1998.

Liberty granted.”

Government on 01.12.1995 and the said scheme has been approved by the Honourable Supreme Court vide its order dated 02.12.1996 in Civil Appeal No.25339/1996. Consequentially, the Respondent and similar Mustering Assistants, who have been working under the Employment Guarantee Scheme, have been gradually absorbed. The Respondent No.1 also must have been absorbed.

11 In the light of the above, this Writ Petition is disposed of in terms of the order of this Court dated 19.02.1998. In the event, the Respondent No.1 is not in employment or has been terminated and has not assailed the said cause of action, he would be at liberty to do so, if otherwise permissible under the law.

12 Rule is discharged.