

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

WRIT PETITION NO. 2163 OF 1996
(Writ Petition No.3425/1994 (Bombay))

Hiraman Suklal Bagul,
Indian Inhabitant, residing at
and post War, District Dhule.

...PETITIONER

-VERSUS-

- 1 Chief Executive Officer,
Zilla Parishad, Dhule.
- 2 Deputy Engineer,
Bhujal Sarvekshan Vikas
Yantrana, Zilla Parishad,
Dhule.
- 3 Director,
Bhujal Sarvekshan Vikas
Yantrana, Nasik.
- 4 State of Maharashtra.
- 5 V.V.Mangarulkar,
Judge, Labour Court, Dhule.
- 6 S.V.Vitkar,
Member, Industrial Court, Dhule.

...RESPONDENTS

...

Advocate for Petitioner : Shri K.C.Sant.
Advocate for Respondents 1 and 2 : Shri N.N.Desale h/f Shri
R.B.Raghuvanshi.
AGP for Respondent 4 : Shri P.N.Kutti.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th September, 2016

Oral Judgment :

1 Respondent Nos.5 and 6 are the learned Presiding Officers of the Labour Court and the Industrial Court. Both are, therefore, deleted from these proceedings.

2 The Petitioner is aggrieved by the judgment of the Industrial Court dated 29.04.1993 by which Revision (ULP) No.168/1992 filed by Respondent Nos.1, 2 and 3 under Section 44 of the MRTU & PULP Act, 1971 was allowed and the judgment of the Labour Court dated 25.03.1992 granting reinstatement to the Petitioner, was set aside.

3 This Court by its order dated 14.03.1995 admitted the petition. However, no interim relief was granted to the Petitioner.

4 It is informed that the Petitioner was born on 14.06.1956 and has completed 60 years on 13.06.2016. He has thus, crossed the age of superannuation.

5 Shri Sant, learned Advocate for the Petitioner, has strenuously

criticized the impugned judgment of the Industrial Court. He draws my attention to the judgment of the Labour Court and especially the adverse inference drawn by the Labour Court in paragraph 20. He submits that the Petitioner was working from 1981 till 1987. He was orally appointed and has been orally terminated from 15.06.1987. He produced the experience certificate at Exhibit-28 issued under the seal of the Respondent Office to indicate that the Petitioner was working from 20.01.1981 as an unskilled labourer on daily wages. He, therefore, submits that the Labour Court has rightly arrived at a conclusion that as the Respondents have not filed the documents which have been sought by the Petitioner, it has to be presumed that the Petitioner has worked continuously in each calendar year. The experience certificate was rightly appreciated by the Labour Court.

6 Shri Sant further submits that the revisional jurisdiction of the Industrial Court is very narrow. The Industrial Court could not have upset the finding on facts. The Industrial Court has exceeded its jurisdiction in quashing the judgment of the Labour Court dated 25.03.1992 and by allowing the revision petition.

7 He also relies upon the judgment of the Honourable Supreme Court in the matter of *Nicholas Piramal India Limited v/s Hari Singh*, **2015**

(2) CLR 468, to support his contention that that at least 50% back wages will have to be granted in the facts of this case.

8 Shri Desale, learned Advocate for Respondent Nos.1 and 2/ Zilla Parishad, supports the impugned judgment of the Industrial Court. He submits that there were several instances where employees of the Zilla Parishad used to obtain experience certificates from the office of the Zilla Parishad. The said certificates used to be pressed into service while lodging a claim for reinstatement or permanency. In the case of the Petitioner, a similar feature appears.

9 Shri Desale further submits that the Petitioner was neither selected nor interviewed for being appointed. Somebody from the Zilla Parishad Department orally appointed him and as a result, he used to work intermittently and used to be paid by vouchers. Exhibit-24 is a document filed by the Petitioner dated 01.06.1987 which is an interview call letter. In the interviews dated 10.06.987, the Petitioner claims to have been selected. However, there is no letter of selection and no letter of appointment. Therefore, the Petitioner claimed to be orally terminated from 15.06.1987. He further submits that besides the experience certificate, there was no evidence before the Labour Court to draw a conclusion that the Petitioner had worked from 1981 till 1987.

10 On the basis of the record, Shri Desale concedes that the
Petitioner had filed a notice for production of documents and the
Respondents failed to produce the same. However, he adds that even if
those documents were produced, it would only show that the Petitioner
was working intermittently. He, therefore, prays for the dismissal of this
petition.

11 I have considered the submissions of the learned Advocates.

12 This Court has refused interim relief to the Petitioner on
14.03.1995 while admitting the petition. There is no dispute that from
15.06.1987, the Petitioner is out of employment for a period of about 29
years.

13 The judgment of the Labour Court indicates that one
appointment order Exhibit 25 was with regard to appointing the Petitioner
as a Watchman on daily wages for only six months. The payment of wages
of the said six months has been made. Besides these documents, there is
nothing before the Labour Court to conclude that the Petitioner had
worked from 20.01.1981 till 14.06.1987. The experience certificate
Exhibit-28 dated 19.02.1987 mentions that the Petitioner was working

from 1981. Besides this certificate, completion of 240 days in each calender year has not been established.

14 It is the claim of the Petitioner that pursuant to the appointment order Exhibit-25, he worked in 1985 and 1986 beyond the period of six months. The experience certificate mentions that the Petitioner was working as an unskilled labourer. The appointment order Exhibit-25 indicates that he was working as a Watchman. These contradictory stands should have been considered by the Labour Court while deciding the complaint. In my view, this perversity in the findings of the Labour Court has been rightly noticed by the Industrial Court.

15 In the light of the above, it can be concluded that the Petitioner had worked in the year 1985 for which he was paid wages. The Honourable Supreme Court has held in the following four cases that where an employee has worked for a short tenure, which is followed by a long duration of unemployment, there ought not to be an order of reinstatement with continuity and with or without back wages :-

- (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].

16 Considering the view taken by the Honourable Apex Court in the above four cases and considering the conclusion of this Court that the Petitioner has worked in the year 1985 on the strength of the appointment order and his payment vouchers, I am inclined to grant compensation to the Petitioner for an amount of Rs.30,000/- for having worked with Respondent Nos.1 and 2/ Zilla Parishad in 1985.

17 In the light of the above, this Writ Petition is partly allowed. The judgment of the Labour Court dated 25.03.1992 and the judgment of the Industrial Court dated 29.04.1993 is modified by directing Respondent Nos.1 and 2/ Zilla Parishad to pay compensation of Rs.30,000/- (Rupees Thirty Thousand) to the Petitioner in lieu of reinstatement, continuity in service and back wages. The said amount shall be paid to the Petitioner within TWELVE WEEKS from today.

18 In the event, the said amount is not paid within 12 weeks, it shall pay interest at the rate of 6% per annum on the said amount of Rs.30,000/- from April, 1992 till it's actual payment to the Petitioner. The

amount of interest shall be recovered from the salary of the concerned officer of Respondent Nos.1 and 2/ Zilla Parishad, who would be held responsible for the delay in not making the payment within 12 weeks. The said amount of interest shall not be paid from the State exchequer.

19 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)