

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

WRIT PETITION NO. 811 OF 1997

The Chief Executive Officer,
Zilla Parishad, Ahmednagar.

...PETITIONER

-VERSUS-

Sambhaji Kashinath Kotade,
R/o Kokamthan, Tq.Kopargaon,
District Ahmednagar.

...RESPONDENT

...

Advocate for Petitioner : Shri S.T.Shelke.
Advocate for Respondent : Shri A.S.Shelke.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th October, 2016

Oral Judgment :

1 The Petitioner/ Zilla Parishad is aggrieved by the judgment and award dated 27.09.1996 by which the Labour Court has partly allowed Reference (IDA) No.7/1992 by passing the following order:-

"Reference is partly allowed.

The first party is directed to provide work to the second party workman Shri Sambhaji Kashinath Kotade, forthwith, on the same terms and conditions as was being given to him in the previous past.

In the crucial circumstances, both the parties are directed to bear their own costs.

Award be drawn accordingly."

2 This Court, while issuing notice on 03.03.1997, granted interim relief in terms of prayer clause (C), which was continued on 23.07.1998 when the petition was admitted and as a consequence of which the impugned award has been stayed.

3 By a detailed order dated 20.02.2002 passed on Civil Application No.2450/1999 filed by the Respondent/ Employee, this Court has refused to grant the payment of last drawn wages under Section 17-B of the Industrial Disputes Act, 1947 by concluding that the prayer for reinstatement put forth by the Respondent/ Employee has been refused and hence, it would not attract Section 17-B and the Employee would, therefore, not be entitled for any payment of last drawn wages.

4 There is no dispute that the Respondent/ Employee was permitted to work on daily wage basis, intermittently, as and when the work was available from 31.09.1979. Though the Respondent has claimed to be 26 years old in 1992, I am of the view that it may not be so for the reason that it would then mean that he was 13 years old in 1979, which is most improbable. The learned Advocate for the Petitioner, therefore, submits that it can safely be held that he must have been about 19 or 20 years old in 1979. If that be so, then the Respondent would be about 56

years old today.

5 Notwithstanding the strenuous submissions of the learned Advocates for the respective sides, it cannot be ignored that the Respondent has not challenged the impugned award by which he was refused reinstatement, his termination was held to be legal and he was not granted continuity and back wages. Instead, the Petitioner was directed to provide work on the same terms as was being offered to the Respondent prior to his purported termination on 05.10.1989.

6 Pursuant to the orders of this Court dated 23.07.1998 and 20.02.2002, this Court has virtually concluded that the Respondent does not have a right to continue on the post and cannot claim any benefit even under Section 17-B of the Industrial Disputes Act, 1947.

7 It is quite evident from the impugned award that the termination of the Respondent has been sustained and it has not been declared to be an illegal retrenchment. He is not granted reinstatement or continuity or back wages. It is trite law that unless the order of termination is not held to be an illegal retrenchment and unless it is established that the employer has violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, there cannot be an order of

reinstatement.

8 It is quite apparent from the impugned award that as the Petitioner was earlier offering work to the Respondent as and when it was available and no right was created in the Respondent to claim regular work, the Labour Court has sympathized with the Respondent and the impugned award apparently is an outcome of sympathy. He had worked for about 41 days in 1979, 63 days in 1980, 27 days in 1981, 68 days in 1982, 57 days in 1986, 102 days in 1987 and 88 days in 1988.

9 In the light of the above, this Writ Petition is disposed of in view of the orders of this Court dated 23.07.1998 and 20.02.2002 by which this Court has concluded that the Respondent has no right to employment and he cannot claim allotment of work or even wages under Section 17-B of the Industrial Disputes Act, 1947.

10 Rule is, therefore, discharged.

kps

(RAVINDRA V. GHUGE, J.)