

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3414 OF 1997

Ashok Pandurang Phalake,
Age-30 years, Occu-Nil,
R/o Phalkewadi, Tq.Shevgaon,
Dist.Ahmednagar

-- PETITIONER

VERSUS

1. The Deputy Director
of Social Forestry Division
Sudakemala , Ahmednagar,
2. The Plantation Officer,
Social Forestry Division,
at Khedkar Nivas,
Manik Daundi Road, Tq.Pathardi,
Dist.Ahemdnagar,
3. State of Maharashtra,
through Govt.Pleader
High Court of Bombay,
Bench at Aurangabad

-- RESPONDENTS

WITH
WRIT PETITION NO.3652 OF 1997

1. The State of Maharashtra,
2. The Dy.Director,
Social Forestry Division,
Sudkemala,
Ta. and Dist.Ahmednagar,
3. The Plantation Officer,
Social Forestry Division,
Khedkar Niwas,
Manikdaundi Road,
Tq.Pathardi, Dist.Ahmednagar

-- PETITIONERS

VERSUS

1. Ashok Pandurang Falke,
Age-23 years, R/o At Post Falkewadi,
Tq.Shevgaon, Dist.Ahmednagar,

2. Member,
Industrial Court,
Ahmednagar.

-- RESPONDENTS

Mr.C.K.Shinde, Advocate for the petitioner.
Mr.S.P.Sonpawale, AGP for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/12/2016

ORAL JUDGMENT :

1. The petitioner / workman in the first petition and the petitioners/Establishments in the second petition have challenged the judgment of the Industrial Court dated 20/03/1997. The workman is aggrieved that he has been deprived of back wages from 27/04/1992 though he has been granted permanency from 01/01/1990. The Establishment is aggrieved by the said judgment on the ground that the Industrial Court has granted permanency to the workman on the ground that he has worked for 5 years with the establishment.

2. The first petition was admitted on 06/10/1997. It is stated that the employee is out of employment from 27/04/1992.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides.

4. The workman had alleged that he was working from 1985 onwards. Complaint (ULP) No.89/1988 was filed for seeking regularization and benefits incidental and consequential thereto. Though the workman has strenuously contended that the Kalelkar Settlement is applicable to the Establishment, I do not find in the entire impugned judgment that the issue of applicability of Kalelkar Settlement was ever put forth by the workman. His complaint was based on the contention that he is not granted permanency and artificial breaks in service are introduced. There is no dispute that no specific procedure of recruitment and appointment, as is expected in public employment, was followed by the establishment.

5. The establishment came forward with a stand taken in the written statement that though the workman has worked intermittently from 1988 till 1992, he himself stopped reporting for duties considering the little work available. The Industrial Court was expected to deal with the issue as to whether the workman had completed 240 days in continuous service. It did consider the aspect

that the workman was engaged on the plantation project on the land belonging to Sultanpur Gram Panchayat and after the project was completed, the land was handed over to the Gram Panchayat. I do not find from the entire reasons assigned to the issue of permanency that the Industrial Court concluded on the basis of any document that the workman had completed 240 days in continuous employment in the calendar year preceding the date of reference i.e. the date on which the complaint was filed. Based on the contention of the establishment, it concluded that he had worked continuously from 1988 till 1992.

6. It also does not appear from the impugned judgment that the Industrial Court has referred to any portion of oral or documentary evidence while concluding that the workman had worked continuously for 5 years.

7. In so far as the claim of being entitled for permanency on completing particular number of years in service or under the Industrial Employment Standing Orders, the learned Division Bench of this Court in the matter of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade, [2016(6) Mh.L.J. 867], has concluded that Standing Orders do not apply to state instrumentalities

especially in matters of claiming permanency since the availability of permanent vacant posts is the decisive factor. Unless such a post is available and is vacant, there cannot be regularization on a non-existing post.

8. Learned Counsel for the workman has strenuously submitted that this Court may quantify compensation to be paid to the workman. I am unable to accept the said request for the reason that the workman had approached the Industrial Court for permanency. The Hon'ble Apex Court in the matters of 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], 3. BSNL Vs. man Singh [(2012) 1 SCC 558] and 4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327] has concluded that reinstatement in service with continuity and back wages would not be appropriate relief when an employee has put in a short duration in employment followed by a long spell of unemployment.

9. In the instant case, in paragraph No.12 of the impugned

judgment, the Industrial Court has concluded that the workman was deemed to be terminated from 27/04/1992 and therefore, as the law of retrenchment was violated, he deserves to be reinstated in service as the establishment has committed unfair labour practice under Item 9 Schedule IV of the MRTU and PULP Act. In my view, the Industrial Court could not have assumed jurisdiction considering the fact that Section 5 of the Act of 1971 does not empower the Industrial Court to exercise jurisdiction in matters of termination, discharge, dismissal, retrenchment etc. Under Section 5(d), the jurisdiction vests in the Labour Court which can decide the legality of termination.

10. In the instant cases, the establishment claims that the workman had abandoned employment and the workman has claimed that he was not allotted work. Unless these disputed questions are not considered by a Court having jurisdiction which is the Labour Court, the Industrial Court, by making a passing reference, could not have concluded that the act of the Management amounts to illegal retrenchment.

11. In the light of the above, Writ Petition No.3652/1997 filed by the establishment is allowed. Complaint (ULP) No.89/1988 therefore

stands dismissed. Rule is made absolute accordingly. Consequentially, WP No.3414/1997 filed by the workman stands dismissed and Rule is discharged.

12. Nevertheless, since the Industrial Court has concluded that the workman has been terminated from 27/04/1992 and as the said termination has not been challenged by the workman, he would be at liberty to raise an Industrial dispute u/s 2-A of the Industrial Disputes Act for assailing the purported termination. In the event, he initiates such proceedings, the contentions of the litigating sides as well as the contention of the establishment that he has abandoned service, coupled with the objection that the Social Forestry Division is not an Industry, are left open for adjudication.

(RAVINDRA V. GHUGE, J.)