

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9665 OF 2010
WITH
CIVIL APPLICATION NO.602 OF 2016

The State of Maharashtra,
Through the Executive Engineer,
Public Works Division,
Sangamner, Dist.Ahmednagar

PETITIONER

VERSUS

Eknath Vishwanath Pathade,
At Rayatwadi, Post : Waghapur,
Tq.Sangamner, Dist.Ahmednagar

RESPONDENT

Mr.D.V.Tele, AGP for the petitioner.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/01/2016

ORAL JUDGMENT :

1. The writ petition was Admitted by this Court by order dated 23/03/2011. Interim relief was granted in terms of prayer clause "C" which reads as under :-

- "1. In view of finding of Labour Court, that delay has not been explained satisfactorily and reference proceedings are almost after 18 years of the alleged termination, Rule. Hearing expedited.*
- 2. Adv.Mr.Shelke waives notice on behalf of the respondent.*
- 3. Interim relief in terms of prayer clause "C".*

2,. By the consent of the parties, the petition itself is heard alongwith the civil application filed by the petitioner/State for depositing Rs.15,208/-.

3. The petitioner/State has challenged the judgment and award of the Labour Court dated 31/03/2010 by which Ref.(IDA) No.8/2006 was partly allowed. The petitioner was directed to provide daily rated work to the respondent / employee as per the seniority list. Continuity of service and back wages have been denied. The employee has not challenged the back wages and continuity of service in this Court.

4. The petitioner submits that there was hardly any evidence before the Labour Court to indicate continuous work for more than 240 days in between 01/07/1985 to 01/03/1987 as was claimed by the respondent. He had worked for a total period of 193 days over a period of about 18 months. Yet the Labour Court partly allowed the reference.

5. The petitioner further submits that though the respondent alleged oral termination is dated 01/03/1987, an industrial dispute was raised after 18 years. This Court, while granting interim relief to

the petitioner at the time of admitting the matter, has taken cognizance of the respondent having slept for 18 years.

6. The learned AGP further submits that the respondent was a daily wager on as and when the work was available. He was in fact a daily wager engaged for working on the sewage and drainage of the respondent (Mail Majdoor). As and when the work was available, he used to be given the work. He had put in about 193 days. Neither was he appointed by an appointment order, nor was any procedure followed in recruiting him.

7. He further submits that though there was no record before the Labour Court, reliance was placed on a seniority list of the petitioner only to indicate that several persons were engaged to do the said work from 21/11/1985 after his oral termination. No details of employment, manner of engagement of such employees was placed on record. The Labour Court simply concluded that 25-G and 25-H of the I.D. Act have been violated.

8. He further submits that in the cross examination, the respondent admitted that he was doing some masonry work to survive which therefore shows that he was gainfully employed.

9. Mr.Shelke, learned Advocate for the respondent has supported the impugned judgment. He submits that because the respondent kept silent for 18 years and did not raise an industrial dispute, he has been deprived of continuity in service and back wages. However, on the strength of the seniority list, it was established that several employees were recruited after his oral termination. The Labour Court has, therefore, rightly directed the petitioner to reinstate the respondent on the same terms and conditions on which he was working prior to his oral termination.

10. Mr.Shelke further submits that this Court, by its order dated 12/04/2013 in CA No.3403/2013 directed the petitioner to comply with Section 17-B. The amount which is being sought to be deposited by the petitioner through CA No.602/2016 is the said amount.

11. Mr.Shelke strenuously submits that no fault can be found with the impugned award. The petitioner did not produce material before the Labour Court to establish its case that the respondent was not working continuously for 240 days. Hence, this petition be dismissed.

12. I have considered the submissions of the learned Advocates

and have gone through the record with their assistance.

13. I do not find evidence before the Labour Court besides the statement of the respondent and an inspection report which indicates 145 days of working in between 1/7/1985 to 18/03/1987 and 48 days working in between 01/01/1987 to 28/02/1987. The error committed by the Labour Court is that it has added all the weekly holidays and other holidays for computing 240 days which is impermissible in the case of a daily wager. The unpaid weekly holidays cannot be reckoned with while computing 240 days though they do not amount to a break in service.

14. Considering the fact that the respondent had an award in his favour and hence was entitled to the relief u/s 17-B, I deem it proper to modify the award in the light of the ratio laid down by the Supreme Court in the following 4 cases :-

“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]. ”

15. In the above 4 cases, the Apex Court has considered a situation of short tenure of employment and long spell of unemployment and has concluded that quantifying compensation in lieu of reinstatement with continuity/back wages is reasonable and practicable.

16. In the light of the above, since the respondent was held to have worked for about 18 months, considering the ratio of the Apex Court in which the quantification of compensation is approximately Rs.30,000/- per year of service, the petitioner is directed to pay compensation of Rs.45,000/-.

17. The amount of Rs.15,208/- is calculated upto December 2016. Learned AGP submits that the amount under 17-B till January 2016 will be Rs.11,300/-. The petitioner is, therefore, directed to add the said amount in the compensation amount and pay the respondent a total amount of Rs.56,300/- within a period of 8 (eight) weeks from today, failing which the said amount shall carry simple interest @ 6%

p.a. from the date of this order.

18. The writ petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

19. Civil application is disposed of in terms of this order.

(RAVINDRA V. GHUGE, J.)