

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

WRIT PETITION NO. 690 OF 1997

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

...PETITIONER

-VERSUS-

1 Eknath Bhaurao Rashinkar,
Age : Major, Occupation : Nil,
R/o Dhangarwadi, PO Wakadi,
Tq.Shrirampur,
District Ahmednagar.

2 Presiding Officer and Judge,
IInd Labour Court, Ahmednagar.

...RESPONDENT

WITH
CIVIL APPLICATION NO.7753 OF 2003
IN WP/690/1997

Eknath Bhaurao Rashinkar.

-versus-

The State of Maharashtra and another.

...

AGP for Petitioner / State : Shri S.B.Joshi.

Advocate for Respondent/Employee : Shri L.S.Shaikh h/f Shri G.B.Kadlag.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th October, 2016

Oral Judgment :

1 Respondent No.2 being the Presiding Officer of the Labour

Court, stands deleted from the proceedings.

2 The Petitioner is aggrieved by the award dated 18.10.1995 delivered by the Labour Court by which Reference (IDA) No.31/1990 has been allowed and the Respondent is granted reinstatement with continuity and full back wages from 04.05.1986.

3 I have heard the learned Advocates for the respective sides. With their assistance, I have perused the petition paper book and the material available on record.

4 This Court, by order dated 12.06.1997, admitted the petition and by granting interim relief in terms of prayer clause (D), stayed the award.

5 The Respondent filed Civil Application No.5182/2000 seeking benefits of Section 17-B of the Industrial Disputes Act, 1947. By order dated 29.06.2001, the Civil Application filed by the Respondent was allowed and the Petitioner was directed to pay the last drawn wages of the Respondent on regular basis. Liberty to reinstate him was also granted. The litigating sides are unable to make a statement as to whether, the Respondent was reinstated in service or not. Nevertheless, the Respondent

again filed Civil Application No.7753/2003 stating on oath that he is unemployed and has no source of income. The said application is still pending.

6 The record reveals that the Respondent had approached the Labour Court in 1990 alleging that he was working as a daily wager with the Petitioner from 1979 till 03.05.1986. He claimed oral termination on 04.05.1986.

7 The Petitioner filed a cryptic Written Statement stating that the Respondent had never worked continuously and had not completed 240 days in any calender year. He himself was remaining absent and has abandoned the service on 07.06.1986.

8 It was in the above backdrop that the Labour Court allowed the reference and had granted reinstatement with continuity and full back wages from 04.05.1986.

9 The impugned award further reveals that besides oral evidence, the Respondent had produced three pay slips pursuant to the inspection reports Exhibits U/5 and U/6. One pay slip indicates that the Respondent worked for 45 days from April, 1980 to 23.05.1980. The

second pay slip indicates that he worked from 03.12.1980 to 02.01.1981 for 30 days and the last pay slip indicates that he worked from 08.03.1983 to 07.04.1983 again for 30 days.

10 The inspection report Exhibit U/5 indicates that the name of the Respondent was not shown on the muster roll-cum- pay slip from 1980 to 1986. The second inspection report Exhibit U/6 indicates that the name of the Respondent was not appearing on the muster roll from 1979 to 1984.

11 As such, the documents reveal that the Respondent had worked intermittently in 1980, 1981 and 1983. However, the Written Statement filed by the Petitioner mentions that the Respondent was absent from 07.06.1986 and he had abandoned his service. The said written statement filed by Shri S.D.Dashpute, Assistant Executive Engineer, Public Works Division, Shrirampur is apparently vague and an ambiguous written statement which indicates non application of mind by the concerned officer. The Written Statement bearing six sentences throws no light on this case except the admission that the Respondent had abandoned the service from June, 1986.

12 Even if the pay slips are taken as skeletal evidence available

for indicating the work performed by the Respondent, it is apparent that the Respondent was working intermittently. In this backdrop, the Labour Court ought not to have granted reinstatement with continuity in service and full back wages.

13 Eventually, this is a case of a short spell of employment followed by a long period of 30 years of unemployment. The Honourable Apex Court in the following four cases has concluded that in such a situation, quantified compensation would be an appropriate relief rather than granting reinstatement with 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].*

14 Considering that the pay slips could be an indicator of some work performed by the Respondent, though I find that the impugned award is perverse and erroneous, I am granting monetary benefits to the

Respondent keeping in view the order passed by this Court dated 29.06.2001 by virtue of which the Respondent would be entitled for the last drawn wages under Section 17-B. The receipt indicates that he had worked for some period in 1980 and then in 1983. The Petitioner contends that the Respondent abandoned the service in 1986. There is no iota of evidence to indicate completion of 240 days in continuous employment in any calender year. I am, therefore, taking into account the years 1980, 1983 and 1986 when the Respondent is said to have abandoned the employment, for the purpose of quantifying the compensation at the rate of Rs.30,000/- per year in service in the light of the ratio laid down in the above referred four cases.

15 This Writ Petition is, therefore, partly allowed. The impugned award dated 18.10.1995 is modified and the Petitioner shall pay compensation of Rs.90,000/- (Rupees Ninety Thousand) to the Respondent in lieu of reinstatement with continuity and back wages. In the event, the last drawn wages have been paid to the Respondent by the Petitioner pursuant to the order of this Court dated 29.06.2001, the said amount shall be set off against this amount of compensation and the remainder amount shall be paid to the Respondent. If some more amount has been paid under Section 17-B of the Industrial Disputes Act, 1947 than the compensation granted, there shall be no recovery.

16 Needless to state, if any compensation amount remains after deducting the amount paid under Section 17-B, the same shall be paid to the Respondent within a period of TWELVE WEEKS from today, failing which the Respondent would be entitled for interest on the unpaid amount at the rate of 6% per annum from the date of the award of the Labour Court till it's actual payment. The said interest, which would be payable due to delay on the part of the Petitioner, would then be recovered from the salaries of the Executive Engineer, Public Works Division, Sangamner and the said amount of interest shall not be paid from the State exchequer.

17 Rule is made partly absolute in the above terms.

18 The pending Civil Applications, if any, do not survive and the same stand disposed of.

19 The record and proceedings be returned to the concerned Court forthwith.