

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1127 OF 1997

1. The State of Maharashtra,
 2. The Executive Engineer,
P.W.D., Ahmednagar,
Dist.Ahmednagar
- PETITIONER

VERSUS

Bapu S/o Kadu Kute,
At Post : Handi Nimgaon,
Tq.Newasa, Dist.Ahmednagar

-- RESPONDENT

Mr.S.N.Kendre, AGP for the petitioner.
Mr.V.N.Upadhye, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 24/11/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and award dated 29/08/1996 by which Ref.(IDA) No.130/1992 filed by the respondent / employee has been partly allowed and he has been granted reinstatement with continuity of service without back wages. This court, while admitting the petition on 27/03/1997, did not grant any interim relief to the petitioners.

2. It is informed that neither has the respondent been reinstated

nor has he been paid monthly wages, in as much as, the respondent has not moved an application u/s 17-B of the I.D.Act, 1947 for seeking last drawn wages during the pendency of this petition.

3. I have heard the submissions of the learned Advocates. Mr.Upadhye strenuously submits that the respondent had made specific contentions of violation of Section 25-F, 25-G and 25-H of the I.D.Act, 1947 which read as under :-

(I will add it lateron)

4. He then submits that he is working as a Class IV daily wager as a “Mile Kamgar” It is given to understand that this Mile Kamgar is that person who is deployed by the PWD for the cleaning of the roads or allied work. Mr.Upadhye submits that though he had worked in between 9/8/1985 to 15/02/1987, he proved before the Labour Court that he had worked for 159 days. By addition of 52 weekly holidays and other National holidays, the Labour Court concluded that, “the second party is on the verge of completing 240 days”.

5. I find that the calculation of completion of 240 days is to be done with reference to 12 calendar months preceding the date of reference. The Labour Court has concluded that by adding the 52

weekly holidays and the national holidays, the respondent did not complete 240 days and is not entitled to any relief.

6. However, I find that the Labour Court granted the relief of reinstatement with continuity of service from 15/02/1987 on the ground that similar co-workers were retained in service. It is on these premises that Mr.Upadhye submits that the respondent proved violation of section 25-G.

7. It cannot be ignored that the respondent/second party workman has worked in between August 1985 to 15/02/1987 over a period of about 16 months and is out of employment for the last 29 years. He has raised an industrial dispute in 1992 after 5 years of his disengagement. During the pendency of this petition, neither has the petitioner reinstated the respondent, nor has the respondent initiated steps for seeking employment with the petitioner.

8. In this backdrop, I find that the ends of justice would be met by modifying the impugned award and by granting compensation to the respondent in the light of the following 4 judgments of the Hon'ble Supreme Court :-

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,*
 4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327.*

9. The Hon'ble Apex Court in the above said 4 judgments has held that where an employee has worked for a short period and it is followed by a long duration of unemployment, an order of reinstatement with continuity would be inappropriate and impracticable. The Hon'ble Apex Court has held that in such circumstances, an amount of Rs.30,000/- per year of service put in by the employee would be sufficient compensation. Therefore, though this compensation would amount to about Rs.45,000/-, I am granting Rs.75,000/- to the respondent since he has been kept out of employment from 1996 till this date despite the petitioner having not being granted interim relief in this matter.

10. As such, this petition is partly allowed. The impugned award dated 29/08/1996 stands modified and replaced by the direction to the petitioner to pay compensation of Rs.75,000/- to the respondent within a period of 12 weeks from today, failing which the respondent

would be entitled to interest @ 3% from Sept.1996. It be noted that if on account of the delay in payment, interest is liable to be paid as directed, said amount of interest shall be recovered from the salary of the Executive Engineer, PWD Division Ahmednagar, Sub-Division Newasa and the said amount of interest shall not be paid through the State exchequer.

11. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)