

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2351 OF 1997
WITH
CIVIL APPLICATION NO.9205 OF 2016

The State of Maharashtra

PETITIONER

VERSUS

Vithal Eknath Bade and another

RESPONDENTS

Mr.P.G.Borade, AGP for State/petitioner.

Mr.V.N.Upadhye, Advocate for respondent No.1.

Respondent No.2 is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/07/2016

PER COURT :

1. Leave to delete respondent No.2 / Labour Court, Ahmednagar.

Deletion be carried out forthwith.

2. The petitioner/Establishment is aggrieved by the judgment and award delivered by the Labour Court dated 22/08/1995 by which Ref.(IDA) No.80/1991 has been partly allowed and the respondent has been granted reinstatement with continuity of service and back wages from 20/11/1990 till reinstatement.

3. It is categorically stated that the respondent has been reinstated in service on 13/02/1996.

4. The learned AGP has strenuously criticized the impugned award. Contention is that the respondent was engaged as a Muster Assistant on 04/06/1980 and was paid salary @ Rs.300/- per month. Prior thereto, he was interviewed by an order dated 05/03/1980. A specific written say was filed contending that the respondent was working under the Employment Guarantee Scheme (EGS). His service was terminated on 26/02/1985 due to non availability of EGS work. He was not the only person to be disengaged. 10 other Muster Assistants were also disengaged as the funds of the EGS were exhausted.

5. Learned Advocate for the respondent/workman has supported the impugned award. He submits that he had worked from 04/06/1980 till 26/02/1985. Section 25-F and 25-G of the I.D.Act were admittedly not complied with while terminating his service. Considering the definition of continuous service u/s 25-B, the termination of the respondent is rendered illegal. When the termination is rendered unlawful on account of non-compliance of the law of retrenchment, reinstatement with continuity of service is the only remedy available.

6. He further submits in the alternative that since he has been reinstated on 13/02/1996, no interference is called for and that he never worked on EGS.

7. I have considered the submissions of the learned Advocates.

8. This Court while admitting the petition on 07/07/1997, had granted interim relief in terms of clause "D" which reads as under :-

"d. To grant stay to the execution and implementation of decision and order dated 22-08-1995 passed by the Ld.Presiding Officer/Judge, Labour Court Ahmednagar in Reference (IDA) No.80/91 during the pendency of this writ petition."

9. By order dated 19/06/1998, in CA No.5671/1997, this Court took into consideration the background of the fact situation, the reinstatement of the respondent on 13/02/1996 and therefore modified the interim relief granted by staying the payment of back wages as granted by the Labour Court till 13/02/1996, during the pendency of this petition.

10. Considering the above and the fact that the respondent is working for more than 20 years as on date, I find it harsh and impracticable to interfere with the findings of the Labour Court on

the ground that an employee working under EGS cannot claim continued employment or reinstatement.

11. The only issue therefore that survives is as regards payment of back wages. Learned AGP has strenuously submitted that no reasons have been assigned for grant of back wages. Learned Advocate for the respondent has supported the conclusion of grant of back wages on the ground that illegal termination necessarily invites payment of back wages.

12. The Hon'ble Supreme Court in the matter of Nicholas Piramal India Ltd., Vs. Hari Singh 2015(2) CLR 468 and in the matter of Gauri Shanker Vs. State of Rajasthan, 2015(2) CLR 497, has concluded that payment of back wages in between 25% to 50% would be an appropriate relief to reduce the rigours of litigation suffered by the employee.

13. However, in the instant case, it cannot be overlooked that the respondent was working on EGS, which is a special scheme floated by the State Government in order to create work and make it available to the unemployed literate or illiterate persons. It is a benevolent scheme and this Court has held in a number of cases that

no employee can lodge any complaint or proceedings against the State for claiming continued employment on EGS or reinstatement on EGS. In this backdrop, the respondent cannot be held entitled for back wages. I am, therefore, unable to accept the submissions of Mr.Upadhye, the learned Advocate for the respondent.

14. In the light of the above, this petition is partly allowed only to the extent of depriving the respondent of the back wages. The direction of the Labour Court granting reinstatement is not being interfered into. Needless to state, the respondent shall be entitled for service benefits considering the fact that he has been working continuously from 13/02/1996.

15. Pending civil application, does not survive and is therefore disposed of.

(RAVINDRA V. GHUGE, J.)