

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2421 OF 1997

1. State of Maharashtra

2. The Executive Engineer,
B & C Division, Ahmednagar. ..Petitioners

Versus

Bapu Kani Khedkar,
at post Belwandi,
Tq. Shrigonda,
District Ahmednagar. ..Respondent

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AGP for Petitioners : Shri Bhagat N.T.
Advocate for Respondent : Shri Shelke S.K.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 1, 2016
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ORAL JUDGMENT:-

1. The petitioners are aggrieved by the judgment and order dated 12.8.1976, by which, Reference (IDA) No.50 of 1993 has been allowed and the respondent has been granted reinstatement with full backwages and continuity of service.

2. While admitting this petition on 23.2.1998, this Court permitted the respondent to file an application under Section 17B of the Industrial Disputes Act for seeking payment of last drawn wages during the pendency of the Writ Petition. By order dated 9.7.1998 on

Civil Application No.3410 of 1998, this Court allowed the application and directed payment of last drawn wages from 1.8.1998, if the petitioner is unable to reinstate the respondent / employee.

3. I have considered the submissions of the learned Advocates for the respective sides and have gone through the record available.

4. It is not disputed that the petitioner did not appear in the Labour Court and as a consequence of which, the Reference was granted ex-parte after the Labour Court relied purely on the affidavit in lieu of evidence tendered by the respondent and by concluding that, *“I have no reason to dis-believe the contents of affidavit Exhibit U/5 of the second party.”*

5. Based on this conclusion, the impugned award has been delivered. It is equally undisputed that besides the contention in the statement of claim and the affidavit Exhibit U/5, there was no evidence before the Labour Court to independently arrive at a conclusion that the purported termination of the respondent amounts to illegal retrenchment. The impugned award, therefore, is unsustainable in law.

6. In the above circumstances, normally the Reference matter would have been remitted to the Labour Court for fresh adjudication

by imposing costs upon the petitioners for having failed to participate in the proceedings. However, Shri Shelke, learned Advocate for the respondent points out that the respondent was 55 years' old when he preferred the Civil Application in 1998 seeking Section 17B benefits. The retirement age of a daily wager is 60 years.

7. In the peculiar facts as recorded above, this petition is allowed. The impugned award is quashed and set aside.

8. Considering the fact that this situation has arisen on account of the failure of the petitioners in rendering assistance to the Labour Court, I am quantifying costs of Rs.10,000/-, which the petitioners shall pay to the respondent within a period of eight weeks from today.

9. Since this Court has granted the benefits of Section 17B to the respondent w.e.f. 1.8.1998, the said benefit till the age of superannuation of the respondent shall be sufficient compensation to the respondent. For the sake of clarity, in the event the said amount has not been paid, the petitioners shall calculate the unpaid wages under Sections 17B and the same shall be paid within 12 weeks from today to the respondent, failing which the said amount shall carry interest at the rate of 5 per cent per annum from the date of the award.

10. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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akl/d