

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 656 OF 1997

1. The State of Maharashtra

2. Deputy Director,
Social Forest Division,
Jalgaon.

..Petitioners

Versus

Shri Sattar Natthu Pinjari
Age major, R/o Goregaonwale,
Tq. Chopda, Dist. Jalgaon.

..Respondent

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AGP for Petitioners : Shri P.N.Kutti
Advocate for Respondent : None present.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 13, 2016

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ORAL JUDGMENT :-

1. The petitioners are aggrieved by the judgment and order dated 9.8.1996, by which, Complaint (ULP) No.632 of 1989 has been allowed and the petitioners are directed to grant permanency to the respondent from the date of filing of the Complaint i.e. 20.7.1989 and pay monetary benefits.

2. By order dated 6.9.2000, this Court admitted the petition and granted interim relief to the petitioners as regards issuance of order of permanency and monetary benefits incidental thereto.

3. None appeared for the respondent on 6.10.2016 and none appears even today.

4. I have heard the learned AGP on behalf of the petitioners and have gone through the record available.

5. The Industrial Court had considered the contentions of the respondent that he was working on daily wages as a Watchman from 1.6.1983 till 31.3.1996. He was given a break in service from 1.9.1987 to 19.8.1988 for which, he approached the Labour Court and in 1989, the dispute was settled between the parties. He was reinstated in service on the condition that he would give up his backwages.

6. A document at Exhibit C/12, produced by the petitioners indicated that the respondent was working continuously from 20.7.1988 till 31.3.1996. In this backdrop, the Industrial Court has granted permanency to the respondent w.e.f. 20.7.1988.

7. It is trite law that permanency cannot be granted in the absence of a permanent vacant post. The entire judgment of the Industrial Court does not deal with the said issue as to whether a permanent vacant post of a Watchman was available with the

petitioner so as to direct the absorption of the respondent on the said vacant post.

8. In these circumstances, in my view, the Industrial Court should have directed the petitioner to forward the proposal of the respondent to the appropriate authority for creation of posts and / or absorption if a post was vacant. When the department of Social Forestry cannot create posts, a declaration of ULP for purportedly continuing the employee as a daily wager could not have been made.

9. In the light of the above, this petition is partly allowed and the impugned judgment of the Industrial Court is modified as under:-

(A) The declaration of ULP against the petitioner is quashed and set aside.

(B) The proposal of the respondent shall be forwarded by the petitioner to the appropriate department / authority for absorption, considering the fact that the document produced by the petitioner before the Industrial Court at Exhibit C/12 indicates that the respondent was in continuous service and was reinstated since a settlement was arrived at between the parties.

(C) The above said proposal shall be forwarded by the petitioner / department within eight weeks from today and the appropriate authorities / department, upon receiving the said proposal, shall decide the same for grant of

absorption to the respondent within sixteen weeks thereafter.

(D) If the respondent is not presently in service or has attained the age of superannuation, the proposal shall make a mention of this aspect so as to enable the appropriate authority to decide the proposal accordingly.

(E) In the event the respondent is presently in employment, the above direction shall not be a cause to enable the petitioner to dispense with his services.

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

(RAVINDRA V. GHUGE, J.)

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