

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2220 OF 2001

1. The State of Maharashtra
Through Government Pleader,
High Court, Bench at
Aurangabad.

2. The Plantation Officer,
Social Forestry, Chalisgaon
District Jalgaon.

..Petitioners

Versus

Subhash Utttam Mahajan,
Age major, Occ. Nil,
At post Mehunbare,
Tq. Chalisgaon, Dist. Jalgaon.

..Respondent

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Special Advocate for Petitioners : Shri Patil Umakant K.
a/w Shri Kutti P.N., AGP
Advocate for Respondent : Shri Patil V.Y.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 22, 2016

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ORAL JUDGMENT :-

1. The petitioners have challenged the award of the Labour Court dated 5.7.2000, by which, the Reference has been partly allowed and the oral termination of the respondent dated 8.8.1995 has been set aside.

2. By it's order dated 14.6.2001, this Court admitted the matter, while issuing notice to the respondent and granted interim relief in

terms of prayer clause (D), owing to which, the impugned award has been stayed. An application for last drawn wages under Section 17B of the Industrial Disputes Act had not been filed. The respondent is out of employment for the past 21 years.

3. I have heard the strenuous submissions of the learned counsel for the petitioners as well as the respondent. With their assistance, I have gone through the record available.

4. The issue before the Labour Court was with regard to the oral termination of the respondent dated 8.8.1995. The petitioner placed a Chart at Exhibit C-5 to indicate the number of days worked by the respondent. In the twelve calendar months, preceding the date of reference i.e. termination, the respondent had worked for 199 days. The Labour Court added 52 weekly holidays and based on the said conclusion, held that the respondent had worked for 240 days. Since Section 25F of the ID Act was not complied with, his termination was held to be unlawful and was, therefore, granted reinstatement with continuity in service, without backwages. There is no dispute that besides Exhibit C-5, there was no documentary evidence before the Labour Court to conclude that the respondent had completed 240 days in continuous employment in a calendar year preceding the date of reference.

5. As such, it is obvious that since the petitioner placed the chart at Exhibit C-5, the reference has been partly allowed by the Labour Court. However, it cannot be ignored that the said chart indicates that the respondent worked for 51 days from 1988 to 1989, 110 days from April 1989 to April 1990 and 47 days from April 1990 to April 1991. From 30.4.1991 till 31.3.1994, the respondent was not in employment. Considering that besides this chart, there was no material before the Labour Court while allowing the reference, I find that the Labour Court has lost sight of the fact that from 1988 to May 1994, the respondent had hardly worked. He was not given any work for three years and had worked for short durations of 47 days, 51 days and 110 days from 1988 to 1991.

6. Considering the above, the impugned award deserves to be interfered with. Merely because the respondent completed 240 days in only one calendar year, he cannot be granted reinstatement with continuity for 21 years.

7. Considering the ratio laid down by the Honourable Apex Court in the following four cases, I deem it proper to modify the impugned award and grant compensation to the respondent in lieu of reinstatement and continuity in service:-

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] and*

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

8. As such, the petitioners shall pay an amount of Rs.75,000/- (Rs. Seventy Five Thousand only/-) by way of compensation in lieu of regularization and continuity in service. Said amount shall be paid by the petitioner within a period of twelve weeks from today, failing which, the said amount shall carry interest at the rate of 6% p.a. and the said interest shall be recovered from the salary of the officer of the petitioner for the delay caused in making the payment. The interest amount shall not be paid from the State exchequer and by fixing the responsibility on the officer who has caused the delay, shall be payable from his salary account. The impugned award is modified accordingly.

9 Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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