

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2216 OF 2001

- 1 The State of Maharashtra.
- 2 The Plantation Officer,
Social Forestry, Chalisgaon,
District Jalgaon.

...PETITIONERS

-VERSUS-

Santosh Whala Pawar,
Age : Major, Occupation : Nil,
At and Post Mehunbare,
Tq.Chalisgaon, Dist.Jalgaon.

...RESPONDENT

...

Advocate for Petitioners : Shri Patil Umakant K., Special Counsel with Shri
P.N.Kutti, AGP

Advocate for Respondent : Shri Vijay Y Patil.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th September, 2016

Oral Judgment :

1 The Petitioner/ State has challenged the award dated 05.07.2000 by which Reference (IDA) No.28/1997 has been partly allowed and the Respondent has been granted reinstatement with continuity in service. The back wages have been denied.

2 I have heard the learned Advocates for the respective sides at length.

3 It is noteworthy that the Respondent has passed away on 26.02.2013. This Court granted interim relief in terms of prayer clause (D) on 23.07.2001 and admitted the petition on 10.12.2001. The Respondent/ Employee has not moved an application for claiming benefits under Section 17B of the Industrial Disputes Act, 1947. His last drawn wages were at the rate of Rs.12/- per day.

4 Though the learned Advocate for the Respondent/ Employee has strenuously defended the impugned judgment, it appears from his deposition before the Labour Court that he has not specifically denied that he worked on Jawahar Rojgar Yojana which is a form of an employment guarantee scheme. He stated in his cross-examination that *“he does not know whether he was working under Jawahar Rojgar Yojana”*. The Petitioner has taken a specific stand that all along the Respondent was working on Jawahar Rojgar Yojana. Exhibit C-4 indicates the days of attendance and Exhibit C-5 indicates the seniority list. Both these documents indicate that they are in reference to Jawahar Rojgar Yojana.

5 Besides the pleadings in the Written Statement, the witness of

the Petitioner also deposed that the scheme on which the Respondent had worked, was subsequently handed over to the Gram Panchayat after three years because Jawahar Rojgar Yojana was aimed at creating areas of plantation under the aegis of the Forest Department and once these plantations were nurtured and sustained over a period of three years, they were handed over to the respective Village Panchayats.

6 In the light of the above, it is apparent that though the Respondent worked on Jawahar Rojgar Yojana, the Labour Court, after considering that he had put in 240 days in continuous service in each calender year, has granted reinstatement. These conclusions are based on the chart Exhibit C-4 produced by the Petitioner.

7 It cannot be ignored that besides the documents at Exhibits C-4 and C-5 produced by the Petitioner, there was no documentary evidence before the Labour Court. The Respondent/ Employee has specifically relied upon Exhibits C-4 and C-5. The Labour Court while appreciating this piece of evidence, should have considered the effect of the said documents in their totality. As such, it is apparent that having worked on Jawahar Rojgar Yojana for setting up various plantation areas, the reference proceedings could not have been entertained by the Labour Court since this Court has laid down the law that employees working on

Employment Guarantee Scheme and similar other schemes including Jawahar Rojgar Yojana, were not entitled for making claims for reinstatement or continued employment.

8 The Respondent has been in litigation from 1997 till 2013 when he passed away. Had he filed his application for benefits under Section 17B, he would have received Rs.12/- per day during the pendency of this petition in the last 12 years. The average working days are about 22 days in each month. He would have, therefore, earned about Rs.38,000/- as Section 17-B benefits.

9 If his entire back wages from the date of termination till the date of his death are calculated, the amount would be Rs.78,000/- approximately. 50% of the back wages would, therefore, be Rs.39,000/- which is almost equal to the Section 17B benefits.

10 In the light of the above, this Writ Petition is partly allowed. The impugned award of the Labour Court dated 05.07.2000 is quashed and set aside. Reference (IDA) No.28/1997 stands rejected.

11 However, the Petitioner is directed to pay Rs.38,000/- (Rupees Thirty Eight Thousand) to the widow of the deceased employee

(Santosh Whala Pawar) within a period of SIXTEEN WEEKS (16) from today, failing which interest at the rate of 6% per annum from 23.07.2001 (the date of the order of this Court staying the award) till it's actual payment, shall be paid by the Petitioner. The amount of interest shall be paid by the concerned officer of the Petitioner who is responsible for the delay in payment of the said amount. The interest amount will be recovered from the salary of such officer and the State Exchequer shall not be burdened with the interest component.

12 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)