

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

WRIT PETITION NO. 4020 OF 1996

1. The State of Maharashtra
 2. The Executive Engineer,
Latur Minor Irrigation Division, Latur.
 3. The Sub Divisional Engineer,
Minor irrigation Division, Latur
- ..PETITIONERS

VERSUS

Maruti Sheshrao Bidave
Age: 34 years, Occu.: Service,
R/o Latur, Tq. & Dist. Latur.

..RESPONDENT

....

Mr. B.N. Patil, Special Counsel with Mr. V.G. Shelke, AGP for
petitioners.
Mr. K.M. Nagarkar, Advocate for Respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 4th FEBRUARY, 2016**

ORAL JUDGMENT :

1. The Respondent No.2 is not a necessary party to this proceeding. Leave to delete Respondent No.2 is granted. Deletion be carried out forthwith.

2. The petitioner-establishment is challenging the judgment and order dated 29.02.1996 delivered by the Industrial Court, Solapur by which Complaint ULP No. 123/1989 has been allowed.

3. This petition was admitted by this Court by order dated 16.01.1997. Prior thereto, by order dated 21.08.1996, interim relief in terms of prayer clause (C) was granted.

4. Prayer clause (C) reads as under:

“(C) Pending heraring and final disposal of this writ petition the impugned judgment and order dated 29.02.1996 passed by the learned Member, Industrial Court, Solapur in Complaint (ULP) No. 123/1989 may kindly be stayed.”

5. Mr. Patil, learned Special Counsel for the petitioner strenuously criticises the impugned judgment. His basic contention is that the respondent was appointed as a Muster Clerk under the Employment Guaranty Scheme (EGS). His nature of work was that of a muster clerk on the construction of canals and tanks. He claimed to have joined duties on 01.06.1979.

6. The respondent preferred Complaint (ULP) No. 123/1989 seeking benefits of regularisation and consequential benefits thereto. By the impugned judgment and order, the complaint was allowed. The declaration of ULP was made against the petitioner under Items 3, 6, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The petitioner was directed to regularise the service of the respondent by granting him status, benefits and privileges of a permanent employee from the date of completion of 240 days in employment.

7. Mr. Patil vehemently submits that the respondent was an employee under EGS. A specific averment was made in the written statement whereby it was brought to the notice of the Industrial Court that the complaint filed by the respondent was untenable as the said complaint could not be maintained by an employee who is working under the EGS. Despite the specific contentions set out in the written statement, the Industrial Court allowed the complaint by the impugned judgment.

8. He further submits that EGS is aimed at making jobs available for the unemployed persons in this country. It is a benevolent act on the part of the petitioner-establishment to provide work to such employees to keep them alive. The aim and object behind the introduction of the scheme is well known. Employment is granted under the EGS only with the aim and object of providing work to unemployed persons. This Court has concluded in catena of judgments that an employee working under EGS cannot put forth a claim for regularisation.

9. The learned Counsel for the respondent supported the impugned judgment. He submits that there is no perversity or error visible from the impugned judgment. The Industrial Court has rightly allowed the complaint. Pursuant to the judgment, the respondent is in employment.

10. I have considered the submissions of the learned Counsel for the respective sides. I have gone through the record and proceedings which are available.

11. There is no dispute that the petitioner has taken a specific stand in the written statement that the respondent was engaged under the EGS. However, I find from the record and proceedings that, besides making a bald statement that the respondent was an employee under the EGS, not a single document has been placed on record before the Industrial Court to convince the Court that the complaint was untenable.

12. The Industrial Court has cast specific issues considering the pleadings of the parties. The issue as to whether the petitioner proves that the respondent is not a workman, was cast. The issue, whether the Industrial Court has jurisdiction to entertain the complaint, was also cast. The Industrial Court, therefore has gone into the aspect as to whether the petitioner could establish that the respondent was working under EGS. On account of absence of any document to support the oral contentions and oral evidence of the petitioner, the Industrial Court concluded that there was no evidence before it to draw a conclusion that the respondent-employee was an employee under the EGS.

13. The EGS is a specific scheme. There is specific documentation in the said scheme. Identity cards are issued to the employees working under EGS. Appointment orders deploying employees under EGS at different locations and sites are issued. If the petitioner did not produce even a sheet of paper to establish that the respondent was working under the EGS, in my view, the Industrial Court has rightly concluded that it could not come to a conclusion that the respondent-employee was working on EGS.

14. Considering the above and the fact that the respondent employee has continued in employment for all these years, I do not find that there is any merit in this petition. Hence same is dismissed. Rule is discharged.

15. Record and proceedings of Complaint (ULP) No. 123/1989 be returned back to the Industrial Court at Latur forthwith.

16. As the petition is dismissed, pending civil applications do not survive and are disposed of accordingly.

(RAVINDRA V. GHUGE, J.)