

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1787 OF 2015

Maharashtra State Road Development
Corporation Ltd.,
Snehnagar, Dist.Nanded,
Through its Executive Engineer PETITIONER

VERSUS

Siddharth Rohidas Sonkamble,
Age-24 years, Occu-Nil,
R/o Takli, Tq.Loha, Dist.Nanded RESPONDENT

WITH
WRIT PETITION NO.8216 OF 2015

Siddharth Rohidas Sonkamble,
Age-25 years, Occu-Nil,
R/o Takli, Tq.Loha, Dist.Nanded PETITIONER

VERSUS

Maharashtra State Road Development
Corporation Ltd.,
Snehnagar, Dist.Nanded,
Through its Executive Engineer RESPONDENT

Mr.S.V.Adwant, Advocate for the petitioner/Management.
Mr.Govind Kulkarni h/f Mr.M.P.Pawde, Advocate for the
respondent/employee.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 29/07/2016

ORAL JUDGMENT :

1. Both these petitions are admitted vide order of this Court dated

01/03/2016.

2. The petitioner is aggrieved by the judgment dated 26/04/2011 delivered by the Labour Court, Nanded, by which Complaint (ULP) No.93/2009, filed by the respondent, has been allowed and he has been granted reinstatement with continuity and full back wages from 31/08/2009. The petitioner is also aggrieved by the judgment of the Industrial Court, Jalna dated 30/10/2014 by which Revision (ULP) No.48/2011 filed by the petitioner has been rejected.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. The petitioner/Corporation, undertook a project of completion of road in Nanded area. They set up a temporary office and engaged the respondent as a "Peon" on 12/02/2007. There is no dispute that there was no advertisement and no selection process undertaken by the petitioner/Management on the plea that the engagement of the respondent/employee was purely on temporary basis during the project.

5. The bank account of the respondent with the Bhagyalaxmi Sah.Bank Ltd.,Nanded was linked for the purposes of paying his wages. The respondent worked upto 31/08/2009 and thereafter no work was

allotted to him, owing to which he preferred the complaint before the Labour Court. By the impugned judgment, the Labour Court concluded that since documents have not been produced by the petitioner and as the respondent has produced the bank book indicating the payments made to him, it is presumed that he has worked continuously from 12/02/2007 till 31/08/2009. It was also concluded that another person by name Mr. Syed Arif was engaged and retained in service by the petitioner

6. After considering the submissions of the learned Advocates and the impugned judgments, it clearly appears that the engagement of the respondent was on temporary basis since there was neither any advertisement nor any vacancy of a substantive post of peon available as against which the selection process could be undertaken. The Integrated Road Development Project (IRDP), which commenced at Nanded, led the petitioner to engage the respondent who also hails from Nanded, as a "Peon" on temporary basis. The Labour Court has allowed the complaint on the ground that an adverse inference of continued employment can be drawn and Section 25-F of the I.D. Act has not been complied with.

7. In the above fact situation, it cannot be ignored that the respondent was engaged as a Peon in the office, that was temporarily set

up by the petitioner for completing the IRD Project at Nanded. There is no dispute that the said project has concluded. In this backdrop, in my view, Section 2 (oo)(bb) of the I.D.Act would be attracted as the services of the respondent have been dispensed with, upon being engaged in a project. Such disengagement, therefore, is an exception to retrenchment as is defined under the I.D.Act and hence in the light of the applicability of section 2 (oo)(bb), the disengagement of the respondent could not be said to be an act of retrenchment. The Industrial Court has rejected the Revision Petition filed by the petitioner on the ground that there is no perversity in the view taken by the Labour Court.

8. It is conspicuous that Section 2(oo)(bb) was not brought to the notice of the Labour Court or the Industrial Court. The petitioner had produced some documents below list Exhibit C-11 before the Industrial Court. These documents were not before the Labour Court as they pertain to the completion of the project. The contention of the petitioner is that the said documents were with regard to completion of the project, which was underway when the Labour Court dealt with the matter and hence they were not produced as those documents were generated only on account of the completion of the project.

9. In the above fact situation, I deem it proper, while setting aside the impugned judgments, to compensate the respondent with a

quantified amount.

10. Under the orders of this Court, the petitioner has deposited Rs.1,25,000/- as on 15/04/2015.

11. In the light of the above, this petition is partly allowed. The impugned judgment of the Labour Court dated 26/04/2011 is modified and the respondent is granted compensation of Rs.50,000/- (Rs.Fifty thousand only) in the light of having completed 2 years service with the petitioner. As such, the respondent would be at liberty to withdraw an amount of Rs.50,000/- from this Court by producing tangible identity proof in the nature of an election ID card or Aadhar Card which is self attested and upon identification of the learned Advocate of the respondent/employee. The remaining amount with interest shall be withdrawn by the petitioner.

12. Rule is made partly absolute in the above terms. Pending civil application is, therefore, disposed of.

13. Consequent to the above, WP No.8216/2015 filed by the respondent, seeking full back wages, stands dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)