

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1686 OF 2003

1. The State of Maharashtra,
Through the Dy. Director
Social Forestry, Jalgaon.

2. Plantation Officer,
Social Forestry,
Amalner, Dist. Jalgaon.

..Petitioners

Versus

Bharat Vedu Patil,
Age major, R/o Kawpimpri,
Tq. Amalner, Dist. Jalgaon.

..Respondent

WITH

WRIT PETITION NO. 1687 OF 2003

1. The State of Maharashtra,
Through the Dy. Director
Social Forestry, Jalgaon.

2. Plantation Officer,
Social Forestry,
Amalner, Dist. Jalgaon.

..Petitioners

Versus

Sambhaji Shantaram Patil,
R/o At Post Dheku (Kh.)
Tq. Amalner, Dist. Jalgaon.

..Respondent

WITH

WRIT PETITION NO. 1688 OF 2003

1. The State of Maharashtra,
Through the Dy. Director
Social Forestry, Jalgaon.

2. Plantation Officer,
Social Forestry,
Amalner, Dist. Jalgaon.

..Petitioners

Versus

Prabhakar Nafar Patil,
R/o At Post Dheku (Kh.)
Tq. Amalner, Dist. Jalgaon.

..Respondent

WITH
WRIT PETITION NO. 1689 OF 2003

1. The State of Maharashtra,
Through the Dy. Director
Social Forestry, Jalgaon.

2. Plantation Officer,
Social Forestry,
Amalner, Dist. Jalgaon.

..Petitioners

Versus

Devidas Suka Patil,
Age major, Occ. Nil,
At Mudi, Tq. Amalner,
Dist. Jalgaon.

..Respondent

...
AGP for Petitioner : Smt. S.S.Raut
Advocate for Respondents : Shri A.R.Shelke
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: March 17, 2016
...

ORAL JUDGMENT:-

1. This Court has admitted all these matters, filed by the State, challenging the judgment and order of the Industrial Court, dated 1.3.2003 thereby allowing the ULP Complaints. Interim relief was refused by this Court. Consequentially, an amount of Rs. 1,94,187/- was deposited by the petitioners in this Court on 30.4.2004.

2. In serial order of these petitions, amounts of Rs. 55447, Rs. 55036, Rs. 23722 and Rs. 57982 are to be apportioned in each of these petitions.

3. Since the petitioner is the same establishment and the respondents are identically situated, I have taken up these petitions for hearing by the consent of the parties today.

4. The learned AGP on behalf of the petitioner / establishment has strenuously criticized the impugned judgment of the Industrial Court. Contention is that the respondent had erroneously averred that they were appointed as Forest Watchmen, that they had rendered continuous service from 1989, that they were not paid minimum wages and that they were entitled for regularization. The petitioner had specifically brought it to the notice of the Industrial Court through its Written Statements that the respondents were appointed on ad-hoc basis on various schemes. Such schemes were termed as the Plantation Schemes. Their temporary engagements came to an end after the completion of the Scheme. None of them had completed 240 days in the continuous and uninterrupted service of the petitioner.

5. It is further submitted that the employees like the respondents were engaged on Employment Guarantee Scheme ("EGS") and as such could not have raised the claim under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act of 1971"). The learned AGP submits that the impugned judgment deserves to be quashed and set aside and all these petitions deserve to be allowed.

6. Shri Shelke, learned Advocate on behalf of the respondents submits that the judgment of the Industrial Court would clearly indicate that there was no evidence put forth by the petitioner to establish that they were appointed on the EGS and were working exclusively on EGS. The Industrial Court has considered the oral evidence at Exhibit U/8. Besides mere pleadings by the petitioner, no evidence was placed on record to support its contention. No documentary evidence was produced to indicate that the minimum rates of wages were being paid to the respondents.

7. He further submits that in the absence of any documentary evidence, the petitioners could not establish their case and as such the complaints filed by the respondents were rightly allowed.

8. He further submits that during the pendency of the complaints, three respondents were intentionally terminated from service on 31.3.1999 and one employee, namely, Prabhakar Patil was terminated on 27.11.1997. Barring Shri Patil, the other three respondents have not challenged their termination. Nevertheless, ever since their termination, the respondents have not been in employment.

9. Shri Shelke further states that the Industrial Court, considered the complaints as regards the claim for regularization only upto the dates of termination of the respondents. It, therefore, did not grant regularization to the respondents but has rightly directed the petitioner to pay difference of wages and retrenchment benefits going by the dates of termination of

the respondents. He, therefore, prays for the dismissal of these petitions.

10. I have considered the submissions of the learned Advocates as have been recorded herein above and have gone through the available record with their assistance.

11. The Industrial Court, in my view, has rightly considered the complaints by restricting the cause of action upto the dates of termination of the respondents. It has rightly not gone into the legality and the validity of the orders of termination since it was beyond the scope of its powers. It is trite law that Section 32 of the Act of 1971, though gives a power to the Labour and Industrial Court to decide incidental issues in relation to a complaint, the said powers cannot be enlarged so as to adjudicate upon cause of action which it could not have otherwise dealt with under the inherent powers as provided under the Act of 1971.

12. In so far as the contention of the petitioner that the respondents were working on EGS is concerned, no record was produced before the Industrial Court by the petitioner. Under the EGS, registers are to be maintained, receipts of payments are to be preserved and individual cards are to be allotted to each of the employees. In the absence of such documents, the Industrial Court could not have believed the bald statement made by the petitioner in the Written Statement. I, therefore, do not find any reason to interfere with the conclusion of the Industrial Court that the complaints were maintainable.

13. The respondents had prayed for regularization. The Industrial Court has granted difference in wages till their date of termination. None of the respondents have challenged the judgment of the Industrial Court by filing Writ Petitions. It, therefore, has to be presumed that the respondents have accepted the impugned judgment of the Industrial Court.

14. With regard to the claim for difference in wages, the Industrial Court has considered the evidence adduced. It was noted that paltry amounts were being paid to these respondents. The Industrial Court has, therefore, rightly considered the grievance of the respondents and has directed the payment of difference in wages. I do not find any error having been committed by the Industrial Court in directing the petitioner to pay the difference in wages.

15. Under the orders of this Court, the amounts as recorded above have been deposited by the petitioner. Same are towards the difference in wages. One of the respondents, namely, Devidas Suka Patil in Writ Petition No. 1689 of 2003 has withdrawn the amount by the order of this Court dated 21.12.2004. Rest of the respondents have not been able to tender solvent surety and hence have not withdrawn the said amounts.

16. In the light of the above, these petitions are dismissed for being devoid of merits. Rule is discharged.

17. The condition for withdrawal of amounts, imposed by this Court, by order dated 21.12.2004 stands recalled and the respondents who have not withdrawn their amounts, are, therefore, at liberty to withdraw the said amounts along with the accrued interest by tendering tangible proof of their identity in the form of Voters' I.D.Card and/or Aadhar Card and upon being duly identified by the learned Advocate for the respondents.

18. So also, the petitioner - Devidas Suka Patil in Writ Petition No. 1689 of 2003 shall stand released from the solvent surety forthwith.

19. Pending Civil Applications therefore, do not survive and accordingly, stand disposed off.

(RAVINDRA V. GHUGE, J.)

...

akl/d