

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

WRIT PETITION NO. 2288 OF 1997
WITH
CIVIL APPLICATION NO.7775 OF 2004
IN WP/2288/1997

The State of Maharashtra.
Through
The Divisional Soil Conservation
Officer, Damdi Mahal, Aurangabad.

...PETITIONER

-VERSUS-

- 1 Shri Atmaram Shankar Ghan Ghav,
(Labour),
C/o Trade Union Centre,
Kotwalpura, Aurangabad.
- 2 The Presiding Officer,
Labour Court, Aurangabad.
(Dismissed against R/2 vide
Court's order dated 12.02.1998)

...RESPONDENTS

...
AGP for Petitioner : Shri N.T.Bhagat.
Advocate for Respondent : Shri A.S.Shelke.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th November, 2016

Oral Judgment :

- 1 The Petitioner/ State is aggrieved by the judgment and award dated 26-27.12.1996 by which Reference (IDA) No.106/1989 filed by the

Respondent/ Employee has been allowed and he was granted reinstatement with continuity of service and without back wages.

2 While admitting this matter, no interim relief was granted. However, by order dated 18.01.2002 in Civil Application No.4347/1999 filed by the Respondent/ Employee, this Court granted the benefits of Section 17-B of the Industrial Disputes Act, 1947 to the Respondent. He was drawing Rs.12/- per day when he was disengaged on 02.12.1987 after working for about 15 months as a daily wager.

3 I have heard the learned Advocates for the respective sides and have gone through the petition paper book and the impugned award with their assistance.

4 The Labour Court has concluded on the basis of the attendance extract produced by the Petitioner at Exhibit C/18 that the Respondent was working for 334 days in between 1986 and 1987. The law of retrenchment under Section 25-F of the Industrial Disputes Act, 1947 mandates completion of 240 days in continuous service in a calender year preceding the date of reference as is defined under Section 25-B of the Industrial Disputes Act, 1947. The Labour Court has observed that the Respondent did not work from 12.08.1987 to 12.09.1987 and 15.09.1987

to 19.11.1987.

5 I find that he was discontinued from 02.12.1987 and as such, the Labour Court was obliged to consider the period of 12 calendar months preceding 02.12.1987 so as to compute completion of 240 days in continuous service. This has not been done by the Labour Court. This being the most decisive factor in this case, the impugned award cannot be sustained.

6 However, by the order of this Court dated 18.01.2002, the Respondent was granted the benefits of Section 17-B. It is trite law that the benefits of Section 17-B are available from the date of the filing of the application and not from the date of the award which is challenged. If such an application is filed immediately upon the filing of the petition, the benefits under Section 17-B would be extended from the date of the application. Nevertheless, the Petitioner by its notification dated 17.02.2003 has extended the benefits of Section 17-B to the Respondent from 27.12.1996. Consequentially, an amount of Rs.30,528/- was paid to the Respondent for the period 27.12.1996 till 17.01.2002 (7 years). For the subsequent period upto 31.12.2002, the Respondent was paid an additional amount. It is informed that in the last about 14 years, the Respondent has been paid Section 17-B payments till March, 2016, which

could be about Rs.60,000/-.

7 In the matters of such nature where an employee has worked for about 15 months and is out of employment for 29 years, the Honourable Supreme Court has observed in the following four judgments that compensation at the rate of Rs.30,000/- per year of service put in by the employee, should be paid in lieu of reinstatement with continuity of service and with or without back wages:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, **[2013 LLR 1009]**;*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, **[(2013) 5 SCC 136]**;*
- (c) *BSNL Vs. Man Singh, **[(2012) 1 SCC 558]**; and*
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, **[(2009) 15 SCC 327]**.*

8 In the light of the above, the compensation that would be payable to the Respondent is about Rs.45,000/- as he has put in about 15 months. He has already received Rs.30,528/- for a period of 06 years and for the subsequent period, he has been paid Section 17-B benefits till March, 2016.

9 In the light of the above, this Writ Petition is partly allowed. The impugned award of the Labour Court dated 26/27.12.1996 is modified. Since Section 17-B payments have already been extended to the Respondent and which amount is more than the compensation which he would have been entitled to, I am not awarding any compensation to the Respondent. Suffice it to say, Section 17-B benefits would amount to compensation. As such, if any unpaid amounts under Section 17-B till the passing of this judgment today are outstanding, the Petitioner shall accordingly, make the said payment to the Respondent within a period of 12 weeks from today.

10 Rule is made partly absolute in the above terms.

11 The pending Civil Application does not survive and stands disposed of.

kps

(RAVINDRA V. GHUGE, J.)