

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3036 OF 1997

1.The State of Maharashtra

2. Executive Engineer,
Public Works Division,
Ahmednagar.

..Petitioners

Versus

Maruti N. Kharmare
r/o at Jambhali, Post. Mohoj,
Tq. Pathardi, Dist. Ahmednagar.

..Respondent

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AGP for Petitioner : Shri N.T.Bhagat
Advocate for Respondent : Shri K.D.Bade Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 1, 2016

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ORAL JUDGMENT:-

1. The petitioner is aggrieved by the judgment and award dated 20.9.1996, by which, Reference (IDA) No.19 of 1988 has been partly allowed and the respondent has been granted reinstatement with continuity without backwages.

2. While admitting this petition on 7.8.1997, this Court has stayed the award.

3. I have considered the submissions of the learned AGP on behalf

of the petitioner and Shri Bade Patil, learned Advocate on behalf of the respondent / employee.

4. The respondent had approached the Labour Court alleging termination from 1.9.1986. He claimed that he was working from 1.3.1983 to 1.9.1986. Besides the oral statement of the respondent, there is no evidence to indicate that he had worked continuously for 240 days in each of the three calendar months.

5. The petitioner produced a chart Exhibit C/11 stating therein that the respondent had worked for 62 days during the period of three years. The Labour Court has disbelieved the said chart. I do not find any conclusion in the impugned award that the respondent has completed 240 days in continuous service in each calendar year. However, the reference has been allowed because some daily wagers were inducted after the respondent was disengaged.

6. The fact remains that the respondent can, at the most be said to have worked intermittently for three years and is out of employment for more than 30 years.

7. The Honourable Apex Court in similar facts and circumstances has concluded in the following cases that reinstatement would not be an appropriate relief in matters where the employee has put in a

short spell in employment and is out of employment for a long duration:-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],

3. BSNL Vs. Man Singh [(2012) 1 SCC 558] and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].

8. Considering the above and the fact that the respondent is out of employment, I deem it appropriate to follow the view taken by the Honourable Apex Court in the above mentioned four judgments.

9. This petition is, therefore, partly allowed. The impugned judgment and order is modified. In lieu of reinstatement and continuity of service, the petitioner shall pay an amount of Rs.90,000/- as quantified compensation to the respondent within a period of twelve weeks from today, failing which an interest at the rate of 5% per annum on the said amount shall be payable from the date of the award. The said interest shall be paid from the salary of the Executive Engineer, PWD, Ahmednagar and the same shall not be

paid through the State exchequer.

10. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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