

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2606 OF 2003

The State of Maharashtra
Through the Divisional Forest
Officer, Aurangabad,
Osmanpura, Division Aurangabad.

..Petitioner

Versus

Devidas Machharam Chavan,
(Watchman), c/o Trade Union,
Center, Kotwalpura, Aurangabad.

..Respondent

...
AGP for Petitioner : Shri Basarkar A.P.
Advocate for Respondent : Shri A.S.Shelke
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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 14, 2016
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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment and award dated 31.12.2002, delivered by the Labour Court, Aurangabad, vide which Reference (IDA) No.170 of 1989 has been partly allowed. The respondent is granted reinstatement with continuity of service from 19.4.1988. He was denied backwages. The respondent has not challenged the denial of backwages in this Court.

2. By order dated 14.7.2003, this Court directed status quo to be maintained by way of ad-interim relief. By order dated 19.4.2004, the petition was admitted and interim relief was denied.

3. The learned AGP has strenuously criticized the impugned judgment. Contention is that the respondent was working on Employment Guarantee Scheme ("EGS"). It is settled law that an employee on EGS cannot claim reinstatement or continued employment or regularization in service, since the said scheme has been introduced only to ensure that some work is made available to unemployed person.

4. The respondent had not worked for 240 days in continuous employment. In the absence of any evidence, the Labour Court could not have partly allowed the Reference. The impugned award is an outcome of misplaced sympathy shown by the Labour Court towards the employee. The same deserves to be quashed and set aside.

5. Shri Shelke, learned Advocate for the employee has supported the award. Contention is that a chart was filed by the petitioner before the Labour Court which is at page 45. The said Chart prepared by the Range Forest Officer indicated that the petitioner had worked for 300 days in 1984, 358 days in 1985, 1986 and 1987 and for 88 days in 1988. The said chart, therefore, indicates that the respondent had worked continuously.

6. He further submits that though the petitioner has taken a stand that the respondent was working on EGS, there was no document that was produced before the Labour Court. The EGS specifically requires record to

be maintained and identity cards are issued to all such employees, who are offered work on EGS. There was no iota of evidence before the Labour Court to establish that the respondent had worked on EGS.

7. He further submits that the witness of the petitioner, namely, Dattu Pralhad Sadavarte also could not establish with the aid of documents that the respondent was working on EGS. The record with regard to payment of wages was not filed by the petitioner. The said witness admitted in cross-examination that the employee was working till 1988.

8. Shri Shelke further points out that the second witness of the petitioner, namely; Gangadhar Motiram Shinde also admitted the employment of the respondent and identified the chart with regard to the work done by the respondent. He, however, conceded that the respondent never worked on EGS. Since the petitioner failed to produce any documentary evidence, the Labour Court could not arrive at a conclusion that the respondent was working on the EGS.

9. He then submits that the Labour Court has rightly concluded that as the respondent was a Watchman, he was guarding the property of the petitioner and therefore, cannot be said to be working under the EGS as the petitioner requires watchmen for protecting its properties. He, therefore, prays for the dismissal of this petition.

10. I have considered the submissions of the learned Advocates. It is informed that despite this Court having refused interim relief to the petitioner, the respondent was not reinstated in service and has now attained the age of superannuation.

11. It is apparent from the evidence before the Labour Court, which has been extensively discussed in the impugned judgment, that though the petitioner took a stand that the respondent was working on EGS, it failed to produce any documentary evidence. The petitioner did not take a stand before the Conciliation Officer that the respondent was working on EGS. Since the matter was referred to the Labour Court in 1989, within one year of the termination of the respondent, it is unconscionable for the respondent in not producing the relevant documents with regard to the EGS if at all the said documents indicated the presence of the respondent on the EGS.

12. It cannot be ignored that an Industrial Dispute was raised by the respondent immediately after his termination. It also cannot be ignored that the respondent is out of employment for the past 28 years, after having put in 5 years in employment.

13. The Honourable Supreme Court has recently delivered four judgments with regard to short spell of employment and long spell of unemployment, as under:-

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].*

14. The law laid down in the above said four judgments is that if an employee has worked for short duration and is out of employment for a long period, it would not be pragmatic to reinstate the employee. Instead, compensation be granted. In the instant case, the respondent has already crossed the age of retirement. The Apex Court has quantified compensation at Rs.30,000/- per year of service. The respondent has put in 5 years in service. I, therefore, find it pragmatic and practicable to modify the impugned award and quantify compensation to be paid to the respondent

15. In the light of the above, this petition is partly allowed. The impugned judgment dated 31.12.2002 shall stand modified with a direction to the petitioner to pay Rs.1,50,000/- as compensation to the respondent within a period of 3 months from today, failing which the said amount shall carry interest at the rate of 3% p.a. from the date of the order of this Court refusing interim relief, which is 19.4.2004.

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

(RAVINDRA V. GHUGE, J.)

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akl/d