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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2593 OF 2002

Shri Uttam S/o Daulat Savai,
Age – 41 years, Occ. Unemployed,
R/o. Itkheda, Po. Deogaon Rangari
Tq. Kannad, Dist. Aurangabad.

...Petitioner...

Versus

The Chief Executive Officer,
Zilla Parishad, Aurangabad.

...Respondent...

.....

Shri A.S. Shelke, Advocate for petitioner.

Shri Deelip Patil-Bankar, Advocate for respondent.

WITH

WRIT PETITION NO.3818 OF 2002

The Chief Executive Officer,
Zilla Parishad, Aurangabad
Through Executive Engineer,
Works Department, Zilla Parishad,
Aurangabad having its office at
Aurangpura, Aurangabad.

...Petitioner...

Versus

Shri Uttam S/o Daulat Savai,
Age – 41 years, Occ. Ex-Daily
Wager Labourer, R/o. Itkheda,
Po. Deogaon Rangari
Tq. Kannad, Dist. Aurangabad.

...Respondent...

.....

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Shri Deelip Patil-Bankar, Advocate for petitioner.

Shri A.S. Shelke, Advocate for respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 22.03.2016

ORAL JUDGMENT :

1] The first petition has been filed by the employee and the second petition has been filed by the establishment challenging the judgment and award dated 11.7.2001 delivered by the Labour Court, Aurangabad, in Reference (IDA) No.148/1992. Considering that both the parties have challenged the said award, I have taken up these two petitions together for disposal.

2] Both these petitions have been admitted by this Court.

3] The material clause, which is Clause (2) in the order impugned, reads as under:-

"The party No.1 is hereby directed to reinstate the party No.2 in service with continuity of service with 40% of back wages for unemployment period (or to pay Rs.40,000/- towards compensation in lieu of reinstatement with continuity of service with 40% back wages) within a period of one month from the date of publication of Award."

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4] The employee has contended that he was working from 1.11.1986 with the employer till his oral termination on 31.10.1990. An industrial dispute was raised promptly and was referred to the Labour Court as Reference (IDA) No.148/1992.

5] Shri Shelke, learned Advocate for the employee, contends that he had discharged the onus and burden of proving 240 days of employment in each year with the establishment before the Labour Court. It was specifically averred in the statement of claim that he was working as a Gangman on daily wages in the Kannad sub-division. The work of road repairing and maintenance was undertaken by the establishment. Such maintenance work is of a perennial nature. He has worked on various road projects namely Verul to Deongaon Rangari, Mategaon to Devnala, Sulibhanjan to Khultabad and Devgaon Rangari to Devli etc.

6] It is further submitted that he had filed an application for seeking production of documents before the Labour Court. Despite the order of the Labour Court directing the establishment to produce the documents for the period during which the employee had claimed to have

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been in employment, the establishment did not produce any such document. Though the employee was cross-examined by the establishment, neither has the establishment led any oral evidence nor has it produced any document. The Labour Court, therefore, has drawn an adverse inference since the establishment failed to produce any documents despite directions.

7] Shri Shelke, therefore, strenuously submits that when there was no delay in raising an industrial dispute and when the employee had succeeded in proving completion of 240 days in continuous employment, there was no reason for the Labour Court to grant compensation of Rs.40,000/- and 40% of the back wages for the period of unemployment in lieu of reinstatement with continuity and full back wages.

8] Shri Deelip Patil Bankar, learned Advocate appearing on behalf of the establishment, has strenuously criticized the impugned award. Contention is that the employee had worked for only 135 days intermittently for the period 1.10.1987 to 30.7.1989. He, however, submits that the establishment neither led oral evidence nor did it produce documents as per the directions of the Labour

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Court. He, however, adds that merely on the basis of an adverse inference, the Labour Court could not have concluded that the employee was working continuously for four years since the burden to prove completion of 240 days in each calender year on the basis of oral and documentary evidence, lies on the shoulders of the employee.

9] He submits that an amount of Rs.40,000/- has already been deposited in this Court by the establishment under the orders of this Court. The said amount deposited in 2002 is still lying in this Court and must have gathered interest.

10] He further submits that besides the oral statement made by the employee, there was nothing to establish his completion of 240 days and as such the Labour Court should have rejected the reference. He further submits that the work of road maintenance is not of a continuous character. Only where the maintenance is to be undertaken, that the work becomes available. He, therefore, prays for the quashing and setting aside of the impugned award.

11] I have considered the submissions of the learned

Advocates as have been recorded hereinabove.

12] The reference proceedings were brought before the Labour with promptitude by the employee. Statement of claim was filed by the employee. The establishment filed its written statement. It was, therefore, within the knowledge of the establishment that the proceedings were pending before the Labour Court. Needless to state, the establishment should have been properly represented, inasmuch as the establishment should have been diligent in ensuring that the documents, as directed by the Labour Court, should have been produced and the matter should have been contested on its merits. Neither has the establishment produced the documents, which led to the drawing of adverse inference, nor did it lead oral evidence.

13] It, however, cannot be ignored that the employee has put in a short spell in service of about four years. He is out of employment for the past more than 25 years. In similar facts, the Hon'ble Supreme Court has concluded that payment of quantified compensation in lieu of reinstatement with continuity and back wages would be more practical and appropriate rather than granting

reinstatement. The said view was taken in the following four cases :-

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

[2] *Assistant Engineer, Rajasthan Development Corporation & another v. Gitam Singh* [(2013) 5 SCC 136]

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

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

14] The Apex Court has held that compensation of Rs.30,000/- per year of service put in would be reasonable compensation. As such, in the instant case, the employee would be entitled for compensation of about Rs.1,20,000/-. The establishment has deposited an amount of Rs.40,000/- in this Court in the year 2002. Same has accrued interest. It is informed by the Registry of this Court that the said amount is Rs.83,770/- as on date.

15] In the light of the above, the establishment shall pay a difference of Rs.36,230/- to the employee within a period of ten weeks from today. The employee is at liberty to withdraw the amount of Rs.83,770/- deposited in this Court by producing tangible proof of

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identity in the form of his election ID / voter's card or the Aadhar card and upon identification by the learned Advocate of the employee.

16] In the light of the above, both these petitions are disposed of by modifying the impugned award as above. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)