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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2591/2002

Shri Baburao s/o Umaji Dhotre,
Age – 50 years, Occ.Unemployed,
R/o Chambharwadi, Po.Deogaon Rangari
Tq. Kannad, Dist. Aurangabad.
...Petitioner...

Versus

The Chief Executive Officer,
Zilla Parishad, Aurangabad.
...Respondent...

.....

Shri A.S. Shelke, Advocate for petitioner.
Mrs. M.A. Deshpande, Advocate for respondent.

WITH

WRIT PETITION NO.5266/2002

Zilla Parishad, Aurangabad.
(through its Chief Executive Officer)
...Petitioner...

Versus

Shri Baburao s/o Umaji Dhotre,
Age – 50 years, Occ. Unemployed,
R/o Chambharwadi, Po.Deogaon Rangari
Tq. Kannad, Dist. Aurangabad.
...Respondent...

.....

Mrs. M.A. Deshpande, 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 :

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1] Both these petitions have been admitted by this Court. The first petition is preferred by the employee, who has challenged the impugned award dated 21.8.2001 delivered by the Labour Court, Aurangabad, in Reference (IDA) No.110/1992 by which he was granted Rs.25,000/- towards back wages and was granted Rs.25,000/- in lieu of reinstatement and continuity of service. The second petition is filed by the establishment challenging the same award. Hence, I have taken up both these petitions together for disposal.

2] I have heard the strenuous submissions of Shri Shelke and Mrs.Deshpande, learned Advocates for the employee and establishment respectively.

3] The employee had contended that he was working from 15.2.1987 upto 15.8.1990 as a labourer in the Kannad Sub-Division of the establishment. There were about 200 employees of such kind, who were doing the work of road maintenance. It was contended that the work of road maintenance is a perennial nature of work and is available all round the year.

4] Since the employee was orally terminated, he had raised an industrial dispute, which was referred to the

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Labour Court as Reference (IDA) No.110/1992. In the statement of claim filed by the employee, he had also contended that the work of maintenance of the roads being available throughout the year, he could not have been orally terminated on the false plea that the work had come to an end. Juniors had been retained in service. Fresh hands were engaged after his oral termination. He had, therefore, alleged violation of Sections 25-F and 25-G r/w Rule 81 of the Industrial Disputes (Bombay) Rules, 1957.

5] Shri Shelke submits that the employee had also issued a notice for production of documents before the Labour Court at Exhibit U-4. Despite the order of the Labour Court, the establishment failed to produce the Nominal Muster Roll (NMR) payment voucher for the period 15.2.1987 till 15.8.1990. The establishment placed some documents on record below list C-8. Those documents did not pertain to the period during which the employee had worked with the establishment.

6] It is also submitted that the petitioner as well as the Deputy Engineer on behalf of the establishment had stepped into the witness box. The establishment had

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taken a plea that since preservation of documents pertaining to daily wagers and NMR is restricted to five years, after the completion of five years, such documents are normally destroyed.

7] The Labour Court had drawn an adverse inference on account of the failure of the establishment to file the documents. It is contended by Mrs.Deshpande that when the documents pertaining to daily rated employees was to be maintained for five years, the same having been destroyed after five years, would not lead to drawing an adverse inference. The Labour Court should have considered the specific plea taken by the employer that the documents were not available. If the documents were destroyed, the drawing of adverse inference has, therefore, led to the impugned perverse judgment.

8] She further submits that the employee himself had admitted that he was working as a labourer (Mail Kamgar / Majdoor) on the maintenance of road activity. If such maintenance work is over, there was no reason for the establishment to continue the employee. These facts should have been taken into consideration by the Labour Court before arriving at a conclusion in the impugned

judgment.

9] I have considered the specific contentions put forth by the employee as well as the establishment. The fact remains that the employee had worked for about three years and six months. Though the documents placed on record indicated that he had worked for only 142 days, by drawing an adverse inference the Labour Court concluded continuous employment.

10] Be that as it may, the employee had moved an application for the benefits of Section 17-B. This Court had granted the application. It is stated on instructions based on the file notings by Mrs.Deshpande that the employee was paid an amount of Rs.68,850/- for the period 01.04.2007 to 30.04.2014. It is revealed from the record that the employee had attained the age of superannuation at 58 years in 2010. The employee has been paid last drawn wages at the rate of Rs.810/- per month upto 30.4.2014.

11] The Apex Court has considered the circumstances of small spells of employment followed by long spell of unemployment. While considering such situations, the Hon'ble Supreme Court has delivered 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]

12] It is thus held that in matters where an employee had put in a short span of employment and is out of employment for a long duration, reinstatement with continuity and back wages would be unreasonable. Instead, it would be practicable and appropriate to grant quantified compensation to such employees and the Hon'ble Supreme Court has held that Rs.30,000/- per year of service would be reasonable compensation.

13] In the instant case, the employee has worked for about 3 years and six months. He would, therefore, be entitled for compensation of about Rs.1,05,000/-.

14] It is submitted by Mrs.Deshpande on the basis of the official record made available to her by the establishment that from 01.04.2007 till 30.4.2014, which

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is the date of retirement of the employee, he was paid an amount @ Rs.810/- per month, which is about Rs.68,850/-. She submits that the amount of Rs.25,000/- was deposited earlier on 31.3.2005, Rs.5780/- on 15.3.2007 and Rs.1000/- on 29.3.2007. As such, the total amount paid by the establishment is Rs.1,00,630/-.

15] In the light of the above, the establishment shall pay a difference of Rs.5,000/- (rupees five thousand only) to the employee within a period of 10 weeks from today. The employee is at liberty to withdraw the entire amount deposited by the establishment in this Court, by producing tangible proof of identity in the form of an election identity card / voters card or the Aadhar card and upon identification by the learned Advocate of the employee.

16] Both these petitions are, therefore, disposed of by modifying the impugned award in terms of the compensation, which is to be paid as above. Pending civil applications, if any, stand disposed of.

(RAVINDRA V. GHUGE, J.)