

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5504 OF 1995
WITH
CIVIL APPLICATION NO.6597 of 2003

1. The Executive Engineer,
Public Works Department,
Ahmednagar,

2. The State of Maharashtra -- PETITIONERS

VERSUS

Ramesh Raghunath Chavan,
Adult, R/o Marhal (Bk.)
Tq.Sinner, Dist.Nasik

-- RESPONDENT

Mr.P.N.Kutti, AGP for the petitioners.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/09/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the award dated 22/12/1993 delivered by the Labour Court by which Ref.(IDA) No.65/1989 has been allowed and the respondent is granted reinstatement on his post of "Majdoor" and with back wages @ 18.50 per day from the date of termination till the date of the award.

2. By a detailed order, the impugned award was stayed. The Civil

Application No.6597/2003 filed by the respondent praying for last drawn wages u/s 17-B of the I.D.Act is still undecided.

3. I have considered the submissions of the learned AGP on behalf of the petitioners and Mr.Shelke on behalf of the respondent /employee. With their assistance, I have gone through the record available.

4. The contention of the petitioners before the Labour Court was that the respondent was working on the Employment Guarantee Scheme. In between 01/05/1985 till 01/05/1987, he was not working from 01/07/1985 to 15/05/1986. A statement at Exhibit C-3 was produced by the Deputy Engineer of the Public Works Department indicating that the total days on which the respondent had worked were 193. Over a period of 2 years, his total number of days of work were 245.

5. Learned AGP submits that when the respondent had not worked for 240 days in continuous employment in any given calendar year, he could not have been reinstated in service. He has been out of employment for the past 29 years. The impugned award is perverse and deserves to be quashed.

6. Mr.Shelke submits that it was proved before the Labour Court that the respondent was not working as a Mustering Assistant but was working on daily wages. He was a "Majdoor". Mr.Dighe and Mr.Badhe, two similar majdoors, who were junior to the respondent, were found to be in service in August and September 1987. Considering the violation of Section 25-G of the I.D.Act, the Labour Court has allowed the reference.

7. Mr.Shelke strenuously submits that in the facts of this case and considering that the respondent desperately needs employment and is only 51 years of age today, the order of reinstatement be maintained. The respondent is willing to waive back wages. He, therefore, prays for the dismissal of the petition and in the alternative, modification in the impugned award in order to sustain reinstatement and continuity of service.

8. Having considered the submissions of the learned Advocates, I find from the impugned award that besides the statement at Exhibit C-3 produced by the petitioner showing number of days worked, there was no evidence before the Labour Court to conclude that the respondent was working continuously or had put in 240 days in

continuous employment prior to the date of reference which is 01/05/1987. The Labour Court has relied upon the explanation put forth by the petitioner that in between July 1986 to April 1987, the respondent had worked for 240 days. Exhibit C-3 placed on record indicates that he had put in 193 days from July 1986 till February 1987. The Labour Court concluded that the respondent appears to have worked for 52 days between March 1987 and April 1987. Based on such conclusion, it held that the respondent had completed 240 days.

9. Despite the strenuous submission of Mr.Shelke that 2 majdoors, who were junior to the respondent, had worked in August and September 1987 and as such the petitioner had violated Section 25-G, I am unable to accept the said submission. In order to prove violation of Section 25-G, a mere statement is not enough. It needs to be proved through documentary evidence that juniors have been retained in service and have continued in employment. It also needs to be proved that the concerned employees are in fact juniors to the claimant. In my view, the Labour Court could not have drawn such a conclusion based on oral submissions.

10. Notwithstanding the above, it cannot be ignored that the

respondent had worked over a period of 24 months. The fact that he had not worked in between July 1985 to May 1986 would indicate that he may have worked for about 15 to 16 months. It also cannot be ignored that he is not in employment for the past 29 years.

11. In the above backdrop, I deem it proper to quantify compensation @ Rs. 30,000/- per year of service put in by the respondent by relying upon the ratio laid down by the Hon'ble Supreme Court in the following cases :-

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

12. In the result, this petition is partly allowed. The impugned award dated 22/12/1993 stands modified and replaced by a direction to the petitioner to pay an amount of Rs.60,000/- to the respondent by way of quantified compensation in lieu of reinstatement, continuity and back wages within a period of 3 (three) months from today, failing which the said amount shall carry interest @ 6% from

December 1993. If the abovesaid compensation is not paid to the respondent, the petitioner / department shall fix the responsibility on the concerned Officer who may cause a delay and the amount of interest shall be recovered from his salary to be paid to the respondent.

13. Rule is made partly absolute in the above terms. Pending civil application would not survive and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)