

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3650 OF 1997

1. The Superintending Engineer,
Ahmednagar Irrigation Circle,
Fakirwada, Nagar Aurangabad Road,
Ahmednagar.

2. The Executive Engineer,
Ahmednagar Irrigation Circle,
Fakirwada, Nagar Aurangabad Road,
Ahmednagar.

3. The Sub-Divisional Engineer,
Ahmednagar Irrigation Division,
Sub-Divisional Deolali Pravara,
Tq. Rahuri, District Ahmednagar.

..Petitioners

Versus

Abdul Bakshubhai Shaikh
R/o Musalwadi Irrigation Bunglow,
Tq. Rahuri, Dist. Ahmednagar.

..Respondent

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AGP for Petitioner : Shri P.N.Kutti
Advocate for Respondent : Shri P.V. Barde h/f Shri D.R.Korde

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 13, 2016

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ORAL JUDGMENT :-

1. The petitioners are aggrieved by the judgment dated 23.12.1996, delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No.734 of 1995 was allowed and, by declaring ULP under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said

Act ") against the petitioners, they were directed to allot work to the respondent as per seniority and availability of the work.

2. By order dated 12.9.1997, this Court admitted the petition and stayed the impugned judgment by granting prayer clause (c). This petition was inadvertently included in the list of petitions decided by this Court on 16.7.2009. By order dated 7.9.2016, the review application was allowed by condoning the delay and this petition was restored at its stage of final hearing.

3. I have considered the strenuous submissions of the learned AGP on behalf of the petitioners and Shri Barde, on behalf of the respondent.

4. The impugned judgment indicates that the respondent failed to prove that he was working continuously or had completed 240 days in each calendar year, though he had claimed to have worked from 1980 till 22.4.1987. It is also revealed that the Industrial Court concluded that the respondent was not entitled for permanency and consequential benefits. The respondent has not challenged this judgment.

5. The last issue dealt with by the Industrial Court indicates that the petitioners are held guilty of ULP under item 9 of Schedule IV of

the Act of 1971 and they are directed to make work available to the respondent as per its availability and his seniority.

6. Though the respondent has averred in the complaint filed by him for seeking regularization in employment, that he deserves to be absorbed on compassionate ground, the said claim has been rejected by the Industrial Court, since the father of the respondent retired from service with the petitioners in 1993 and the respondent has never applied for compassionate appointment. There is no documentary evidence to indicate that he applied for compassionate appointment.

7. The respondent claims to have been disengaged on 22.4.1987. He filed his complaint on 23.11.1995, which is practically after 8 years and 5 months. Admittedly, he was not in employment and according to the petitioners, he was disengaged more than 8 years ago. The said termination could have been judicially scrutinized only by the Labour Court considering Section 7 of the 1971 Act, which vests jurisdiction in the Labour Court to deal with cases of discharge, dismissal, retrenchment, termination or otherwise removal from service. The Industrial Court, therefore, could not have exercised jurisdiction in the said matter and more so when the respondent stood terminated 8 years and 5 months prior to the filing of his complaint.

8. Be that as it may, the fact remains that no application for condonation of delay was filed by the respondent seeking condonation of 8 years and 2 months of delay, considering the limitation of 90 days prescribed by law. Even on this count, the Industrial Court could not have entertained the complaint until the delay was condoned.

9. Notwithstanding the above stated legal hurdles, the Industrial Court could not have drawn a conclusion that Section 25G of the Industrial Disputes Act, 1947 has been violated, when there is no observation based on oral and documentary evidence in the impugned judgment that fresh hands were engaged after the disengagement of the respondent or that juniors to the respondent were continued in employment by the petitioners.

10. In the light of the above, this petition is allowed. The impugned judgment of the Industrial Court dated 23.12.1996 is quashed and set aside and Complaint (ULP) No.734 of 1995 stands dismissed.

11. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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