

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4863 OF 2001
WITH
CIVIL APPLICATION NO.7001 OF 2016

The State of Maharashtra,
Through the Executive Engineer,
Public Works Department, (EGS)
Division, Aurangabad Road,
Ahmednagar

-- PETITIONER

VERSUS

Mahadev Sahebrao Abhang,
At Post : Pathardi (Kasba),
Tq.Pathardi, Dist.Ahmednagar

-- RESPONDENT

Mr.P.N.Kutti, AGP for the respondent/State.
Mr.D.R.Jayabhar, Advocate for the respondent/employee.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/09/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the award dated 06/05/2000 delivered by the 2nd Labour Court, Ahmednagar vide which Ref.(IDA) No.57/1993 filed by the respondent has been partly allowed. The petitioner is directed to reinstate the respondent on his original post with continuity of service from 01/05/1987, without back wages.

2. By an order dated 28/11/2001, this court admitted the petition

and did not grant interim relief as the impugned award is dated 06/05/2000 and the petition was lodged on 05/11/2001.

3. By the order of this Court dated 14/10/2003 on the civil application filed by the respondent u/s 17-B of the I.D.Act, this Court has granted last drawn wages to the respondent until disposal of this petition. It is stated by the respondent that he has received Rs.68,850/- till 2014 and Rs.16,200/- have been deposited in this Court. The civil application has been filed for seeking withdrawal of the said amount.

4. Considering the above position, the civil application is allowed and the respondent is permitted to withdraw Rs.16,200/-.

5. I have considered the strenuous submissions of the learned AGP on behalf of the petitioner and Mr.Jaybhar, learned Advocate on behalf of the respondent/employee, on the writ petition.

6. The respondent had contended that he was engaged as a daily wage labourer from 01/04/1984 at the Pathardi Sub Division. After having worked continuously, he was disengaged orally on 13/04/1987. He had put in 240 days in continuous employment in

each calendar year and especially in the calendar year preceding the date of disengagement.

7. The petitioner had filed its written statement at Exh.C-4. It was denied that the respondent has worked continuously. It was denied that he was working on any permanent vacant post. A chart indicating the number of days worked was produced at Exh.C-7/4 by which it was indicated that the respondent had worked for 128 days in between October 1984 to September 1985 and for 205 days in between October 1985 to September 1986. It was further indicated that from 09/08/1986 till 30/04/1987, as work was not available, the respondent had not worked for even a single day.

8. In the light of Section 25-B and 25-F of the I.D.Act, in order to conclude that the termination amounts to illegal retrenchment owing to non compliance of Section 25-F, an employee is required to put in 240 days in continuous employment in a calendar year preceding the date of reference, which is the date of termination. There is no dispute that the respondent has come with a case of termination w.e.f. 01/05/1987. As such, from 01/05/1986 to 30/04/1987, which is the period of reference, the respondent has to establish completion of 240 days. He has put in 97 days from May 1986 till

April 1987. It is equally undisputed that besides this chart, which is placed on record, there was no documentary evidence before the Labour Court to conclude otherwise. It appears that the impugned award is based on the presumption that since the chart Exh.C-7/4 indicates the number of days worked, the respondent has established completion of 240 days. I, therefore, find that the impugned award is perverse.

9. In so far as the non-compliance of Section 25-G is concerned, there was no evidence before the Labour Court to conclude violation of Section 25-G.

10. The respondent was a daily wager who effectively has put in 205 days in between September 1985 till October 1986. He has put in 128 days in between April 1984 to August 1985. He is out of employment for the past 29 years. In fact, going by the chart placed on record, he is not in employment from September 1986 till 30/04/1987.

11. The Hon'ble Supreme Court in the following four judgments has concluded that when a short spell of employment is followed by a long duration of unemployment, there cannot be an order of

reinstatement with continuity and with or without back wages :-

“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]. ”

12. In the above judgments, it is concluded that Rs.30,000/- per year of service put in was appropriate compensation. Even if it is presumed that the respondent has put in 2 years in continuous service, he would ordinarily be entitled for a compensation of Rs.60,000/-. With the order of the civil application passed today, he has received Rs.85,050/-. As such, I am inclined to grant him Rs.15,000/- more so as to make the figure of payment as Rs.1,00,000/-.

13. In the light of the above, this petition is partly allowed. The impugned award dated 06/05/2000 is modified and in the peculiar facts of case, considering the order u/s 17-B, the petitioner is

directed to pay an additional amount of Rs.15,000/- to the respondent within 12 weeks from today. Needless to state, in the light of the order on CA No.7001/2016, the petitioner shall withdraw the amount of Rs.16,200/- as also accrued interest, if any.

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

(RAVINDRA V. GHUGE, J.)