

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3133 OF 2015

The State of Maharashtra.
Through Executive Engineer,
Public Works Department,
Ambajogai, Dist.Beed.

...PETITIONER

-VERSUS-

Shri Sanjay Ganpatrao Mahanwar,
R/o C/o Trade Union Centre,
Shriram Nagar, Beed,
District Beed.

...RESPONDENT

**WITH
WRIT PETITION NO.7400 of 2012**

Ashok s/o Gyanandeo Dhaygude,
Age : 42 years, Occupation : Unemployed,
R/o Kekat Sarani, Post Kalamb Amba,
Tq.Kej, District Beed.

...PETITIONER

-VERSUS-

The State of Maharashtra.
Through Executive Engineer,
Public Works Department,
Ambajogai, Dist.Beed.

...RESPONDENT

**WITH
WRIT PETITION NO.7401 of 2012**

Prabhakar s/o Ganpatrao Mahanawar,
Age : 45 years, Occupation : Unemployed,
R/o Kekat Sarani, Post Kalamb Amba,
Tq.Kej, District Beed.

...PETITIONER

-VERSUS-

The State of Maharashtra.
Through Executive Engineer,
Public Works Department,
Ambajogai, Dist.Beed.

...RESPONDENT

...

AGP for the Establishment : Shri D.R.Korde.

Advocate for Employees : Shri Shelke Avishkar S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th January, 2016

Oral Judgment:

1 The second and third petitions have been admitted by the order dated 06.09.2012. Liberty was granted to the Petitioners/ Employees to apply to the Government in view of the proposal which is already submitted to the State Government.

2 Insofar as the first petition is concerned, Rule. Rule made returnable forthwith and heard finally by the consent of the parties along with Writ Petition Nos.7400/2012 and 7401/2012.

3 The Petitioner in the first petition is the Respondent in the second and third petitions. The Respondent in the first petition is an

employee who is said to be identically situated as like the Petitioners/ Employees in the second and third petitions. Since a common issue is involved, I have heard these three petitions together. For the sake of convenience and for clarity, the Respondent in the first petition and the Petitioners in the second and third petitions would be referred to as “the Employees”. The Petitioner in the first petition which is the Respondent in the second and third petitions, would be referred to as “the Establishment”.

4 The Establishment is aggrieved in the first petition by the judgment and award dated 27.08.2012 delivered by the Labour Court, Aurangabad by which Reference (IDA) No.56/2001 is allowed. The oral termination of the Employee dated 01.06.1991 is quashed and set aside and he has been granted reinstatement with continuity of service and 50% back-wages w.e.f. 03.10.2000.

5 The Employees in the second and third petitions are aggrieved by the judgment and award dated 30.09.2011 delivered in Reference (IDA) Nos.54/2001 and 57/2001 by which the said References have been answered in the negative.

6 I have heard the learned Advocates for the Establishment and

the Employees for quite sometime.

7 It is not in dispute that these three employees were appointed as Road Clerks (Marg Lipik) w.e.f. 20.02.1990, 01.02.1989 and 01.01.1988 respectively. All of them were working with the same Establishment. It is also not in dispute that the evidence adduced before the Labour Court covers all these three Employees.

8 Shri Shelke, learned Advocate for the Employees, submits that these three Employees were working continuously as Marg Lipiks. All the three have been orally terminated w.e.f. 01.06.1991, 01.06.1990 and 01.01.1990 respectively. All the three have worked continuously in the uninterrupted service of the Establishment. They were drawing about Rs.45/- per day as daily-wagers.

9 Shri Shelke further submits that in the first case, an official letter dated 29.06.2001 was produced on record. The information received from the Establishment with regard to their working as daily wagers was also placed on record. The said documents were proved in the evidence and were granted exhibit numbers. In short, all these employees proved completion of 240 days over a period of 16 months in the first and the second case and about 24 months in the third case. The second and

third cases were decided by the Second Labour Court, Aurangabad which answered the References in the negative and concluded that the said two employees do not deserve reinstatement in service and consequential benefits. The Reference in the first case was decided by the First Labour Court, Aurangabad and the same has been allowed on similar set of facts.

10 Shri Shelke, therefore, strenuously submits that the judgment and award in the first case dated 27.08.2012 deserves to be sustained and the judgment and award dated 30.09.2011 in the second and third cases deserves to be quashed and set aside and the said employees deserve to be reinstated in service with continuity and 50% back-wages as has been granted to the employee in the first case.

11 Shri Shelke further raises an objection with regard to the first case that a challenge has been posed to the judgment and award dated 27.08.2012 by filing the first petition on 12.02.2015 which is practically after 2 and ½ years. The first petition, therefore, be dismissed on the ground of delay and the second and third petitions be allowed.

12 Shri Korde, learned AGP appearing for the Establishment, has strenuously criticized the impugned judgment dated 27.08.2012 in the first case and has supported the impugned judgment delivered by the

Labour Court dated 30.09.2011 in the second and third cases.

13 His first contention is that these employees have not raised an industrial dispute for almost 10 years after their oral termination. They allowed passage of time. The Establishment normally preserves the documents for a period of about 5 years. By delaying the raising of an industrial dispute, these employees have deliberately approached the Authority belatedly since in the said period all relevant documents pertaining to their daily wage engagement would be destroyed and the Establishment would be left with no evidence.

14 The learned AGP further submits that the tenure of employment of these three employees is roughly in between 16 to 24 months. They have been out of employment for the past about 25 to 26 years. The Establishment is a Government department and is not a private industry. Merely because they completed 240 days in continuous employment, would not entitle them for reinstatement with continuity and 50% back-wages as has been granted by the Labour Court in the first case.

15 He further submits that the procedural delays have led to the filing of the first petition after about 2 and ½ years from the date of the

judgment of the Labour Court. Each of these employees has caused delay of about 9 to 10 years in raising an industrial dispute. The statement of claim was filed by these three employees in April, 2004 which is practically after 14 years of their termination. In these circumstances it would be unreasonable to reinstate all these employees who have worked for about 16 to 24 months and grant them continuity of service and back-wages for a period of about 20 to 25 years.

16 Shri Shelke has relied upon the recent judgment of the Apex Court delivered on 12.05.2015 in the case of *Raj Kumar Dixit vs. Vijay Kumar Gauri Shanker, Kanpur Nagar*, **(2015) 9 SCC 345**, to support his contention that the Apex Court had set aside the judgment of the High Court in granting compensation of Rs.2 lac in lieu of reinstatement, continuity of service and back-wages. The judgment of the Labour Court granting reinstatement was upheld by the Apex Court.

17 I have considered the submissions of the learned Advocates as have been recorded herein above.

18 Insofar as the filing of the first petition is concerned, the Establishment has set out certain reasons explaining the delay caused in filing this petition. It is, therefore, submitted that no harm or prejudice is

caused to the Employee by filing of the petition after about 2 and ½ years of the date of the judgment of the Labour Court, which is not an inordinate delay.

19 It is the case of the Establishment that they normally preserve documents for a period of five years. The documents are, therefore, destroyed. Consequentially, the delay caused by these employees in raising an industrial dispute after about 9 to 10 years of their oral termination, disables the Establishment from producing documents. The said situation, therefore, would surely create hurdles in the path of the Establishment to prove that the Employees were engaged as daily-wagers as Road Clerks as and when the work was available.

20 The fact remains that evidence on record indicates that the Employees in the second and third cases were also covered by the documents produced by the Employee in the first case before the Labour Court. The two Labour Courts dealt with the first case and the second and third cases. On almost similar set of facts, one Labour Court came to the conclusion that the Employee in the first case deserves to be reinstated with continuity and 50% back-wages. The other Labour Court dealing with the second and third cases concluded on similar set of facts that the Employees had not proved completion of 240 days and therefore, were

disentitled for any relief.

21 In the light of the above and considering the oral and documentary evidence on record, I am of the view that the Employees in the second and third cases are required to be placed at par with the Employee in the first case.

22 All these three Employees have worked in between 16 to 24 months with the Establishment. They have been out of employment as on date for a period of almost 25 to 26 years. In similar set of facts, the Apex Court concluded in the following four cases that quantifying the compensation based on number of years put in service, would be practical and reasonable instead of granting reinstatement with continuity of service and with or without back-wages:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009]*;
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136]*;
- (c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558]*; and
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327]*.

23 Shri Shelke has placed reliance upon the judgment of the Apex Court in the case of Raj Kumar Dixit (supra). After considering the facts of the said case, I find that the ratio would not be applicable to the cases in hand for the following reasons:-

- (a) The Appellant before the Apex Court was working from 1994 till 11.06.2001 which is a period of about seven years.
- (b) He challenged his oral termination dated 11.06.2001 with promptitude without wastage of time.
- (c) The Employer before the Apex Court was a private firm carrying on business of transporting caustic soda.
- (d) In the cases in hand before me, the Employees have been working for about 16 to 24 months.
- (e) The Establishment is a Government entity.
- (f) An industrial dispute is raised by the Employees after about 9 to 10 years and they are out of employment for about 25 to 26 years.

24 In the light of the above, I am of the view that following the ratio laid down by the Apex Court in the above mentioned four cases would be a more practical and reasonable approach. Since the Employee in the first case is armed with an order of reinstatement and the

Establishment has challenged the judgment after about 2 and ½ years, I am granting him more compensation than the remaining two Employees who have lost their cases before the Labour Court and are before this Court as Petitioners in the second and third cases.

25 In the light of the above, all the three Writ Petitions are partly allowed as follows:-

- (a) The judgment in the first case dated 27.08.2012 granting reinstatement with continuity of service and 50% back-wages is modified. The Employee in the first case, namely, Sanjay Ganpatrao Mahanvar would, therefore, be entitled for compensation at the rate of Rs.30,000/- (Rupees Thirty Thousand) per year of service. Hence, he would stand to earn an amount of Rs.45,000/- (Rupees Forty Five Thousand) as compensation with addition of Rs.15,000/- (Rupees Fifteen Thousand) for the delay caused by the Establishment for challenging the said judgment of the Labour Court. He would, therefore, be entitled for total amount of Rs.60,000/- (Rupees Sixty Thousand) as compensation.
- (b) The Employee (Ashok G. Dhaygude) in the second case would be entitled for compensation of an amount of Rs.45,000/- (Rupees Forty Five Thousand) for having worked for about 16

months, at the same rate as like the first Employee.

- (c) The Employee (Prabhakar G. Mahanawar) in the third case would be entitled at the same rate for compensation of an amount of Rs.60,000/- (Rupees Sixty Thousand) as he has worked for two years with the Establishment.
- (d) Consequentially, the judgment and award dated 30.09.2011 in the second and third cases would also stand modified in the above terms.
- (e) The amount of compensation as directed above shall be paid by the Establishment within a period of TWELVE WEEKS from today, failing which the said amount shall carry interest at the rate of 6% per annum from the date of this judgment.

26 Rule is made partly absolute in the above terms.