IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2572 OF 2016

The Chief Executive Officer,
Zilla Parishad, Osmanabad.

...PETITIONER

-VERSUS-

Balu s/o Jaising Rathod,
Age : 35 years, Occupation : Nil,
R/o Behind Terna College,
Laman Tanda, Osmanabad,
District Osmanabad.

...RESPONDENT

...

Advocate for Petitioner : Shri Bondar U.B.
Advocate for Respondent : Smt.S.A.Dhumal-Tambat.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th October, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the judgment and award dated 03.08.2015 delivered by the Labour Court by which Reference (IDA) No.1/2011 has been allowed ex-parte and the Petitioner is directed to

reinstate the Respondent with continuity and full back wages.

3 I have heard the strenuous submissions of the learned Advocates for the respective sides.

4 There appears to be no dispute that the Petitioner/ Zilla Parishad has taken over the poultry project of Osmanabad in 2002 much prior to the raising of an industrial dispute by the Respondent. The Respondent has claimed to be working from 01.01.1984 to 30.12.1987 in the continuous employment of the poultry project at Osmanabad. He has claimed to be orally terminated with effect from 30.12.1987. The industrial dispute is raised after 24 years from the date of oral termination.

5 It also cannot be ignored that the Petitioner, having taken over the project in 2002, should have been impleaded as the First Party in the reference proceedings. The poultry project at Osmanabad was not in existence on the date on which the reference was registered before the Labour Court in 2011. As a consequence, none represented the First Party before the Labour Court, which has led to the ex-parte impugned award.

6 Though the Industrial Disputes Act, 1947 does not prescribe

any limitation, it is well settled that an inordinate delay caused in filing of the reference cannot be considered casually. It is also settled that no party can derive an advantage of it's own wrong. The Respondent could not have been granted full back wages for a period of 24 years during which he kept silent and did not raise an industrial dispute.

7 It is also well settled that merely because the Management/ Establishment has not participated in the proceedings, the claim of the Complainant/ Employee/ Claimant cannot be allowed only by relying upon the affidavit filed by the Claimant / Complainant / Employee without there being any documentary evidence. It is equally settled that the onus and burden lies on the employee to prove completion of 240 days in continuous employment in the calender year preceding the date of reference before the Court.

8 Though the learned Advocate for the Respondent has strenuously supported the impugned judgment, he contends that in the event this Court is inclined to consider this petition, the matter may be remanded to the Labour Court.

9 Considering the above, this Writ Petition is partly allowed. The impugned award dated 03.08.2015 is quashed and set aside.

Reference (IDA) No.1/2011 is remitted to the Labour Court at Latur on the following conditions:-

(a) The Respondent/ Employee shall forthwith array the Petitioner/ Zilla Parishad through it's Chief Executive Officer as the First Party No.2 in the reference proceedings keeping in view the law laid down in the matters of *M/s Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar*, **AIR 1964 SC 1746** and *Digambar Madye and others Vs. Union of India and others*, **2015(II) CLR 540**.

(b) The litigating sides which include the Petitioner, shall appear before the Labour Court on 02.12.2016.

(c) After the Respondent/ Employee arrays the Petitioner as the First Party No.2 in the reference proceedings, the Petitioner shall file it's Written Statement within FOUR WEEKS from the date of being impleaded.

(d) The Labour Court, while deciding the reference proceedings, shall consider the following aspects:-

(i) Delay of 24 years caused in raising of the dispute.

(ii) The possibility of there being no documentary evidence preserved by the Petitioner on account of passage of 24 years.

(iii) In the event, the Respondent succeeds in proving continuous

employment for 240 days in the calender year preceding the date of reference i.e. the date of termination, the Labour Court shall consider the grant of compensation in lieu of reinstatement, continuity and back wages keeping in view the judgments delivered by the Honourable Supreme Court in the matters of *(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].***

(e) The litigating sides shall endeavour to extend cooperation to the Labour Court for the expeditious disposal of the reference proceedings.

10 Rule is made partly absolute in the above terms.

kps (**RAVINDRA V. GHUGE, J.**)