

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

WRIT PETITION NO.3892 OF 2007

- 1 The Superintending Engineer,
Command Area Development Authority,
Garkheda, Aurangabad-431001.
- 2 The Executive Engineer,
Jaikwadi Irrigation Division,
Nath Nagar (North), Paithan,
District Aurangabad.

...PETITIONERS

-VERSUS-

Dagadu Vishwanath Mane,
Aged Major, Occupation Not Known,
R/o Trade Union Centre,
Near Medical College,
Ambejogai, District Beed.

...RESPONDENT

WITH
CIVIL APPLICATION NO. 12520 OF 2016
IN WP/3892/2007

DAGADU VISHWANATH MANE
VERSUS
THE SUPERINTENDING ENGINEER AND ANOTHER

...
Advocate for Petitioners : Shri A.P.Chawre.
Advocate for Respondent : Shri Natu Sharad V.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th September, 2016

Oral Judgment :

1 Both the learned Advocates for the original Petitioner and the Respondent graciously showed their willingness to proceed with the Writ Petition instead of listing it for final hearing on some other day. Considering the same, the Civil Application is allowed. The Writ Petition is taken up for final hearing forthwith by the consent of the parties.

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

3 The grievance of the Petitioners / Establishment is that by the impugned award dated 22.12.2006, the Labour Court allowed Reference (IDA) No.43/1999 and granted reinstatement to the Respondent as a Clerk on daily wages with continuity in service and deprived him of the back wages.

4 Shri Chawre, learned Advocate for the Petitioners, submits that the documents produced by the Petitioners under the orders of this Court dated 18.03.2008 specifically indicate the duration of work of the Respondent from 20.08.1984 till 11.08.1987. However, the documents placed on record with regard to the number of days worked would indicate that the Respondent has actually worked in between 01.05.1985

till 30.04.1987 intermittently. In a few months, he has worked for three to ten days and in some months, he had worked in between 15 to 25 days.

5 Shri Natu, learned Advocate for the Respondent/ Employee, has strenuously supported the impugned award. He also relies upon the Government Resolution dated 24.11.2000 by which all such workmen working with the Petitioner Establishment having put in five years of continuous service, are granted benefits under the Kalelkar Award. He, therefore, submits that by virtue of the Kalelkar Award, the Respondent needs to be absorbed on a Converted Regular Temporary Establishment (CRTE) and after five years of such working, he needs to be regularized in service.

6 I have considered the submissions of the learned Advocates and I have gone through the petition paper book and the record available, with their assistance.

7 The Respondent had produced the list of documents below Exhibit U/5 which is referred to by the Labour Court in its award. By placing reliance upon the document at Exhibit U/5/1 and the affidavit in lieu of examination in chief Exhibit U/9, the Labour Court has come to the conclusion that the Respondent was working continuously since

20.08.1984 till 11.08.1987. Perusal of Exhibit U/5/1 would indicate that it is a letter dated 06.11.1997 addressed by the Respondent to the Petitioner/ Establishment indicating that he is not in employment from 12.08.1987 as he was unwell. He has produced the medical certificate on record which indicates that he was suffering from Tuberculosis including Hepatitis from 20.10.1987 till 31.12.1988 and was fit to join duties on 01.09.1989. It cannot be ignored that the Respondent raised an industrial dispute about his unemployment w.e.f. 11.08.1987 in 1999. The Labour Court has granted reinstatement with continuity in service.

8 Considering the impugned award, it is apparent that besides the request letter at Exhibit U/5/1 and the affidavit of the Respondent, there was no material before the Labour Court to conclude that the Respondent had worked for 240 days in continuous service in a calendar year preceding the date of reference which is the purported oral termination dated 12.08.1987. However, I find from the documents produced by the Petitioner under the orders of this Court referred to above, that the Petitioner concedes that the Respondent was working as a daily wager in between 20.08.1984 to 11.08.1987. It is not in dispute that the Respondent is not in employment for 29 years after having worked intermittently for three years.

9 Considering the above, I deem it appropriate to place reliance upon the judgments of the Honourable Supreme Court in the following four cases:-

- (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].*

10 The Honourable Apex Court in the above four cases has ruled that in the matters of a short spell of employment followed by a long duration of unemployment, compensation of Rs.30,000/- per year of service put in, would be appropriate and grant of reinstatement with continuity and with or without back wages is impracticable.

11 As such, since the record establishes that the Respondent had worked for three years and was out of employment for 29 years, this Writ Petition is partly allowed. The impugned award dated 22.12.2006 is modified and the Respondent is granted compensation of Rs.90,000/-

(Rupees Ninety Thousand) in lieu of reinstatement, continuity in service and all benefits arising out of his employment and non employment.

12 The Petitioner/ Establishment is directed to pay the said amount of Rs.90,000/- to the Respondent/ Employee within a period of TWELVE WEEKS failing which the Petitioner shall pay interest at the rate of 6% per annum on the said amount from January, 2007 till it's actual payment. It be noted that if the payment of compensation is delayed, the interest amount shall be paid from the salary of the concerned officer of the Petitioner/ Establishment who is guilty of delaying such payment. The interest shall not be paid from the State exchequer.

13 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)