

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3923 OF 2002

1. The State of Maharashtra,
Through Secretary,

2. The Executive Engineer,
Minor Irrigation (Loal Sector)
Division, Beed

PETITIONERS

VERSUS

Anurath Tukaram Puri,
Age-50 years, Occu-Service,
C/o Trade Union Centre,
Bashir Gunj, Beed

RESPONDENT

Mrs.S.S.Raut, AGP for the petitioners.
Mr.P.L.Shahane, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 31/03/2016

ORAL JUDGMENT :

1. The petitioners/Establishment is aggrieved by the award dated 27/11/2001 delivered by the Labour Court, Aurangabad by which Ref.(IDA) No.96/1993 has been answered in the affirmative.

2. This Court admitted this matter on 23/10/2002 and after hearing both the sides, refused interim relief by order dated 29/11/2002. This Court has observed that since there was no specific averment in the petition that Page Nos. 19 to 31 were a part

and parcel of the record before the Industrial Court (should be read as Labour Court), the contention of the learned AGP that the respondent/employee was appointed under the Employee Guarantee Scheme (hereinafter referred to as EGS), was rejected by this Court.

3. The learned AGP has strenuously canvassed that the respondent/employee was working on the EGS. She, therefore, submits that in the light of the view taken by this Court, an employee engaged to work on the EGS cannot question his termination and cannot seek reinstatement or regularization in employment.

4. She, therefore, submits that though the petitioners have admitted that the respondent was working in the Department from 01/11/1986 upto 01/03/1992, he was working on Nominal Muster Roll (NMR) and voluntarily stopped reporting for duties we.f. 02/03/1992. He was never terminated and this fact was brought to the notice of the Labour Court through paragraph Nos.1, 3 and 6 of the written statement filed by the petitioners.

5. She, therefore, submits that the impugned award deserves to be quashed and set aside and the reference deserves to be answered in the negative.

6. Mr.P.L.Shahane, appearing on behalf of the respondent/ employee has strenuously supported the impugned award. He contends that no documentary evidence was placed before the Labour Court by the petitioners to indicate that he was working as a Majdoor on EGS. It is admitted that he was working for 5 years and 3 months as a “Chaukidar” considering the contention set out in paragraph No.1 of the written statement. A “Chaukidar” cannot be a Majdoor working on EGS. He, therefore, prays for dismissal of this petition with costs.

7. He further submits that a civil application No.6677/2005 was filed seeking benefits of Section 17-B of the I.D.Act. By order dated 09/01/2015, this Court has tagged the civil application with this petition since the civil application was already pending for 10 years without orders.

8. I have considered the submissions of the learned Advocates for the respective sides.

9. The operative part of the impugned award especially clause 2 and 3 read as under :-

“2. The party No.2 is entitled for the relief of reinstatement with continuity of service, but without back wages or compensation of Rs.30,000/-, in lieu of reinstatement with continuity of service.

3. The party No.1 is hereby directed to reinstate the Party No.2 with continuity of service, but without back wages or to pay the amount of Rs.30,000/- towards compensation in lieu of reinstatement with continuity of service within a period of one month from the date of publication of award.”

10. It is, therefore, apparent that the respondent/employee was granted the relief of reinstatement with continuity or compensation of Rs.30,000/- in lieu of reinstatement and continuity. The option was, therefore, left to the petitioner/Establishment either to reinstate the employee or pay him compensation of Rs.30,000/-. It is not in dispute that neither the employee was reinstated nor was he paid Rs.30,000/-.

11. Considering the directions given by the Labour Court reproduced as above, and the fact that the respondent/employee has not challenged the impugned award thereby meaning that he has accepted the award, would not entitle him to the benefits of Section 17-B. The option of payment of compensation in lieu of

reinstatement was available to the petitioner.

12. Notwithstanding the above, I find that there was no documentary record before the Labour Court that the respondent / employee was a Majdoor working on EGS. Paragraph No.1 of the written statement of the petitioners indicates that he was working as a “Chaukidar” and Labourer. In the absence of documentary evidence, it cannot be accepted that he was working as a Majdoor under EGS merely because the petitioners so contend.

13. In the light of the above, I do not find any reason to interfere with the impugned award. Apparently, the petitioners do not desire to reinstate the respondent/employee. The alternative relief granted by the Labour Court will therefore have to be enforced from the date of the impugned award considering the fact that the respondent / employee has accepted the said award. The amount of Rs.30,000/- was payable in 2002 after the impugned award was published by the Labour Court. Even if simple interest @ 3% is granted on the said amount w.e.f. 2002, the said amount could have grown more than 2 times till this date.

14. In the light of the above, by modifying the Award, I find it

appropriate to direct the petitioners / Establishment to pay compensation of Rs.75,000/- to the respondent / employee considering the simple interest factor for the last 14 years. Said amount shall be paid within 12 weeks from today.

15. The writ petition is, therefore, partly allowed and Rule is made partly absolute in the above terms. Civil application in the light of the above order, does not survive and is disposed of.

(RAVINDRA V. GHUGE, J.)