

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

WRIT PETITION NO.2565 OF 1998
WITH
CIVIL APPLICATION NO. 10102 OF 2016
IN WP/2565/1998

Shri Shrirang s/o Patilba Aher,
Age : 30 years, Occupation : Unemployed,
R/o at Apegaon, Tal.Kopargaon,
District Ahmednagar.

...PETITIONER

-VERSUS-

Chief Executive Officer,
Zilla Parishad,
Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri Dhage Babasaheb V.
Advocate for Respondent : Shri S.T. Shelke
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th July, 2016

Oral Judgment :

1 The Petitioner, who is the Applicant in the Civil Application, requests through the said application that Writ Petition No.2565/1998 be heard urgently since it is pending final hearing for almost 18 years.

2 On instructions from the Petitioner, who is present in the

Court, Shri Dhage, learned Advocate submits that the petition itself may be heard today.

3 Shri Shelke, learned Advocate for the Respondent/ Zilla Parishad, does not oppose.

4 In the light of the above, the Civil Application is allowed and the Writ Petition is taken up for final hearing forthwith.

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

6 It is not in dispute that the Labour Court has, by its ex-parte award dated 12.08.1996, allowed Reference IDA No.18/1993 and thereby, granted reinstatement with continuity and full back-wages to the Petitioner/ workman from 29.01.1986. It is also undisputed that the Respondent/ Zilla Parishad did not participate in the reference proceedings, did not file its Written Statement and did not oppose the reference. It is equally undisputed that in the entire award, the conclusion of the Labour Court is in one sentence which is *“I have no reason to disbelieve the contents of affidavit Exhibit U-7.”*.

7 Exhibit U-7 is the affidavit of the worker in lieu of Examination-in-Chief. Neither was he cross-examined nor was any documentary evidence placed on record to indicate that he was working from 13.01.1979 upto 28.01.1986.

8 The award dated 12.08.1996 was published by the Labour Court as per the scheme of the Industrial Disputes Act, 1947 on 31.08.1996. The Respondent/ Zilla Parishad preferred Miscellaneous Application No.16/1996 within 30 days on 24.09.1996 from the date of publication of the award.

9 The Labour Court considered the said miscellaneous application praying for recalling of the award and restoration of the reference proceedings. By the judgment dated 25.09.1997, the ex-parte award was set aside and the reference was restored.

10 The grievance of the Petitioner/workman is that when he had worked for seven years and in the light of the failure of the Zilla Parishad to participate in the proceedings, the clock cannot be reversed practically by 20 years and the matter cannot now be restored before the Labour Court for adjudication. He, therefore, prays that this petition be allowed.

11 In the alternative, he prays that the impugned order be set aside and by restoring the award, this Court may consider the merits of the matter. By way of a second alternative and on instructions from the Petitioner, present in the Court, it is submitted that this Court may quantify the compensation in lieu of reinstatement, continuity of service and back-wages.

12 Shri Shelke, learned Advocate for the Respondent/ Zilla Parishad, has submitted that this petition was admitted on 26.06.1998. No relief was granted to the Petitioner. There is no dispute that the Zilla Parishad did not participate in the reference proceedings. However, it cannot be ignored that there was neither any documentary evidence available before the Labour Court, nor was there corroborative evidence on the strength of which the reference could have been allowed. He, therefore, submits that merely because an affidavit has been filed, the reference could not have been allowed based on the affidavit in the absence of evidence.

13 Insofar as the prayer for compensation is concerned, Shri Shelke submits that the Petitioner does not deserve any compensation. His service was engaged intermittently and cannot be said to be of continuous nature. He, therefore, opposes the prayer for compensation and submits

that this petition be dismissed with costs. He further submits that the Zilla Parishad is prepared to go back to the Labour Court in the reference proceedings, which have been restored and contest the reference on its merits.

14 The fact situation as above is self explanatory. The Petitioner is out of employment for 30 years. He claims to be in employment for seven years which version was accepted by the Labour Court when the award was delivered.

15 The Honourable Supreme Court, in the following four judgments, has laid down that where a short spell of employment is followed by a long duration of unemployment, rather than granting reinstatement with or without back-wages, the Court could quantify the compensation :-

- (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].

16 The ratio laid down by the Honourable Apex Court in the above four judgments is that an amount of Rs.30,000/- per year of service put in by the employee, can be sufficient compensation. It cannot be ignored that the proceedings before the Labour Court in Reference IDA No.18/1993 were pending from 1993 till 12.08.1996. The Petitioner has specifically averred that he was continuously working as Muster Assistant from 13.01.1979 till 28.01.1986. 'No W.S.' order against the Respondent/ Zilla Parishad was passed on 18.02.1994. The reference was, therefore, decided practically after two years and six months. For the fault of the Zilla Parishad, the Petitioner, who has crossed the age of superannuation, cannot be subjected to rigours of litigation and manifest inconvenience. It also cannot be ignored that he is without employment for the last 30 years.

17 Considering the above, I deem it proper to follow the view taken by the Honourable Supreme Court in the above referred four cases and bring this litigation to an end by granting compensation to the Petitioner.

18 In the light of the above, the impugned order dated

25.09.1997 is set aside and the award dated 12.08.1996 is modified as follows:-

- (a) The Respondent/ Zilla Parishad shall pay the Petitioner compensation at the rate of Rs.30,000/- (Rupees Thirty Thousand) per year of service put in by him.
- (b) The above said compensation would, therefore, be an amount of Rs.2,10,000/- (Rupees Two Lac Ten Thousand) which the Respondent/ Zilla Parishad shall pay to the Petitioner 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 till it's actual payment.

19 Rule is made partly absolute in the above terms.