

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6484 OF 2015

Balaji S/o Mallaya Tumbalwad,
Age-45 years, Occu-Service,
R/o Golegaon, Tq.Umari,
District : Nanded

PETITIONER

VERSUS

1. The Chief Executive Officer,
Zilla Parishad, Nanded,
2. The Executive Engineer (Minor Irrigation),
Zilla Parishad, Nanded,
3. The Sub Divisional Engineer (Water Supply),
Sub Division, Umari, Tq. Umari,
District Nanded

RESPONDENTS

Mr.A.S.Shelke, Advocate for the petitioner.
Ms.Preeti V.Diggikar, Advocate for respondent Nos. 1 and 2.
Respondent No.3 served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/02/2016

ORAL JUDGMENT :

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

2. The petitioner has challenged the judgment dated 13/01/2015 delivered by the Labour Court, Nanded in Application (IDA) No.5/2014, which was filed by the petitioner u/s 33(C)(2) of the

I.D.Act, 1947.

3. The undisputed facts of the case in brief are as follows :-
 - a. The petitioner joined as a Daily Wager employee in January 1985 and was terminated orally on 29/09/1992.
 - b. After raising an industrial dispute, Reference (I.D.A.) No.47/1993 was registered before the Labour Court, which was partly allowed by judgment dated 08/04/2003.
 - c. The Labour Court directed the reinstatement of the workman on or before 18/05/2003 with continuity.
 - d. The respondent preferred W.P.No.5660/2003, which was dismissed on 17/02/2004.
 - e. The respondent preferred L.P.A.No.56/2004, which was dismissed on 04/07/2005.
 - f. The respondent preferred a Special Leave Petition before the Apex Court, which was dismissed on 18/03/2010.
 - g. The petitioner was reinstated on 10/11/2010.
 - h. No salary was paid to the petitioner from 18/05/2003 till 10/11/2010.
 - i. No salary was paid after reinstatement from 10/11/2010 till July 2011.
 - j. Application (P.W.A.) No.2/2011 was filed by the petitioner before the Labour Court claiming wages for 9 months pursuant to his reinstatement and the said application was allowed on 24/04/2012.
 - k. The petitioner preferred Application (I.D.A.) No.5/2014 u/s 33(C) (2) claiming part of the unpaid wages despite the order dated 24/04/2012 and all back wages from the date of award till the date of reinstatement.

1. The application was partly allowed by the impugned judgment dated 13/01/2015 denying a major claim of the petitioner.

4. Mr.Shelke, learned Advocate for the petitioner submits that when the award of the Labour Court mandates reinstatement of the petitioner from 18/05/2003 and which award has been sustained right upto the Apex Court, the effect of the award from 18/05/2003 cannot be nullified by the act of the respondents in keeping the petitioner out of employment and reinstating him on 10/11/2010 which is practically after 6½ years.

5. He submits that since the award was sustained and has attained finality, the respondent cannot be absolved of its duty only because it had engaged the petitioner in litigation. The Labour Court, by its observations in paragraph No.5 of the impugned judgment, has totally misdirected itself and has concluded that since the petitioner was reinstated in employment on 10/11/2010 and as the Labour Court had declined back wages, he is not entitled for wages for the said period.

6. Ms.Diggikar, learned Advocate strenuously supports the conclusions of the Labour Court in the impugned judgment. She

submits that though the Labour Court, by its award dated 08/04/2003, had directed the respondents to reinstate the petitioner in the employment on or before 18/05/2003, the respondents were litigating against the petitioner before the Single Judge Bench of this Court, the Appeal Bench as well as before the Apex Court. The impugned judgment of the Labour Court cannot be faulted since the award dated 08/04/2003 has attained finality only after the Apex Court dismissed the Special Leave Petition of the respondent. Pursuant thereto, the petitioner was reinstated and hence the principle of “no work-no wages” will become applicable to the instant case. She, therefore, prays for the dismissal of this petition.

7. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

8. Section 17-B of the Industrial Disputes Act, 1947 reads as under :-

“17-B. Payment of full wages to workman pending proceedings in higher Courts - Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer refers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during

the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court :

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period of part, as the case may be.”

9. There is no dispute that the respondents had continued its litigation with the petitioner as against the judgment dated 08/04/2003 by which the Labour Court granted reinstatement with continuity of service. The petitioner was, therefore, entitled to the benefits of Section 17-B. Though the respondents were in litigation with the petitioner, would not absolve the respondents from their obligation of either reinstating the petitioner or paying him his wages in lieu of reinstatement.

10. The Labour Court, by its judgment dated 08/04/2003 has not granted back wages to the petitioner from the date of his termination

till 18/05/2003. Post 18/05/2003, the claim of the petitioner would not constitute a claim towards back wages, but would constitute a claim for regular monthly wages. The Labour Court, by the impugned judgment, has apparently misunderstood the operative part of the judgment dated 08/04/2003. The rightful claim of the petitioner for continued wages from 18/05/2003 till 09/11/2010 has been unjustifiably rejected. The impugned judgment is, therefore, perverse to that extent.

11. In the light of the above, this petition is allowed. The impugned judgment is modified to the extent of rejection of the claim of the petitioner for wages for the period 18/05/2003 to 09/11/2010. Application (IDA) No.5/2014 filed by the petitioner is, therefore, allowed. The respondent/Zilla Parishad shall pay the petitioner his wages for the period 18/05/2003 till 09/11/2010 alongwith 12% interest from 10/11/2010 till the actual payment. This entire amount with interest shall be paid by the respondent/Zilla Parishad to the petitioner within 12 (twelve) weeks from today.

12. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)