

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

WRIT PETITION NO. 7713 OF 2014

Vithal Nilkanth Garule,
Age : 51 years, Occupation : Labour,
R/o Belpandhari, Post Suregaon,
Taluka Newasa, District Ahmednagar.

...PETITIONER

-VERSUS-

Executive Engineer,
Kukadi Project Land Development,
Division No.1, Nagar Aurangabad Road,
Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondent : Shri Rajale Gulab B..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 2016

Oral Judgment :

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

2 The Petitioner/ Employee is aggrieved by the judgment and award dated 10.01.2014 by which Reference (IDA) No.1/2008 has been rejected by the Labour Court, Ahmednagar.

3 I have considered the strenuous submissions of the learned Advocates for the respective sides and with their assistance, I have gone through the petition paper book and reports cited.

4 The undisputed factors in this case are as under:-

- (a) The Petitioner joined as a daily wager on 01.02.1984.
- (b) He claimed to have been orally terminated on 01.04.1988.
- (c) On 01.04.1996, he preferred Complaint (ULP) No.119/1996 before the Industrial Court at Ahmednagar under the MRTU & PULP Act, 1971.
- (d) On 19.03.2004, he withdrew the complaint so as to raise an industrial dispute.
- (e) After he raised an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947, the matter was referred to the Labour Court by way of reference.
- (f) During the pendency of the reference, the Petitioner attempted to amend his statement of claim by giving up his contention that he was orally terminated on 01.04.1988 and instead sought to substitute the said date by 01.11.1985. The said request/ application was rejected by the Labour Court.
- (g) The Petitioner moved an application Exhibit U/4 seeking

production of documents. The Labour Court allowed the same by order dated 23.12.2009 and directed the Respondent/Establishment to allow inspection (wrongly mentioned as “verification” in the impugned award) of the documents and supply such copies of the documents which the Petitioner would demand after taking inspection.

- (h) The witness of the Respondent Mr.Prakash Ghevrikar submitted that no inspection of documents such as muster rolls, salary sheets, seniority list and service book was given to the Petitioner.
- (i) By the impugned judgment and award, the Labour Court has concluded that the Petitioner could not prove completion of 240 days in continuous employment in twelve calender months immediately preceding the date of reference under Section 25-B of the Industrial Disputes Act, 1947.

5 Shri Barde, learned Advocate for the Petitioner, has placed reliance upon the following judgments of the Honourable Apex Court:-

- (a) *Harjinder Singh vs. Punjab State Warehousing Corporation*, **AIR 2010 SC 1116**.
- (b) *Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda*, **AIR 2010 SC 1236**.

(c) *Bhavnagar Municipal Corporation vs. Jadeja Govubha Chhanubha*, **AIR 2015 SC 609**.

6 There is no dispute that the onus and burden to prove completion of 240 days in continuous employment, lies on the employee. The Honourable Supreme Court in the matter of Director, Fisheries Terminal Division (supra) has also concluded that initial burden lies on the employee and the burden of proof then shifts on to the employer if it is denied that the employee has completed 240 days. It cannot be ignored that despite the directions of the Labour Court dated 23.12.2009, the Respondent/ Establishment did not produce the documents and also did not give any inspection to the Petitioner. Had that been done, considering the fact that the documents were in the exclusive custody of the Respondent/ Employer, the Petitioner would have stumbled across some documents which would indicate his working with the Respondent. On the one hand, the Respondent refused to produce the documents and on the other hand, the Respondent has boldly canvassed that the Petitioner could not prove completion of 240 days. Considering the above, the Respondent appears to be taking an advantage of it's own wrong.

7 Insofar as the claim of the Petitioner is concerned, it appears

from the application for amendment filed before the Labour Court that the Petitioner had claimed to have worked in between 01.02.1984 to 01.11.1985. This is roughly a period of about 18 months. The number of days worked in the form of a chart produced at Exhibit C/7 by the Respondent, indicates that the Petitioner has worked for 195 days prior to 31.10.1985 keeping in view that he had worked for about 182 days in between 17.02.1984 upto 01.02.1985. Apparently these are the days of actual daily wage working by the Petitioner and does not include 52 weekly holidays and some national holidays. Keeping this in view, it appears probable that the Petitioner may have put in 240 days in 12 calender months preceding the date of reference. This aspect could have been proved had the Respondent produced the documents which it refused to do so despite the directions from the Labour Court.

8 Considering the above, I find this to be a fit case to exercise my jurisdiction under Articles 226 and 227 of the Constitution of India since I find that the observations of the Labour Court on this count appear to be perverse.

9 Shri Rajale, learned Advocate for the Respondent/ Establishment, has strenuously submitted that even if it is presumed that the Petitioner was orally terminated from 01.11.1985, the reference

proceedings were initiated on an industrial dispute raised in 2007 which is practically 22 years post the oral termination. He, therefore, prays that no interference is called for considering the delay of 22 years.

10 I find that the Petitioner had preferred Complaint (ULP) No.119/1996. After pendency of 08 years, the said complaint was withdrawn for raising an industrial dispute. After passage of 03 years therefrom, he has raised an industrial dispute. In this backdrop, I am not inclined to accept the contention of Shri Rajale and more so keeping in view the conduct of the Respondent in refusing to comply with the directions of the Labour Court to produce the documents.

11 It needs to be considered that the Petitioner can be said to have worked for about a year or so. He is out of employment for the past about 31 years. In this backdrop, I deem it proper to place reliance on the following four judgments of the Honourable Supreme Court:-

- (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].

12 In the above four judgments, the Honourable Supreme Court has ruled that where a short tenure of employment is followed by a long spell of unemployment, the direction of reinstatement with continuity would be impracticable and the compensation of about Rs.30,000/- per year of service put in by the employee, would be an appropriate relief.

13 Considering the above and keeping in view the conduct of the Respondent, this Writ Petition is partly allowed. The impugned award rejecting the reference is modified and Reference (IDA) No.1/2008 stands partly allowed by directing the Respondent/ Establishment to pay compensation of Rs.30,000/- (Rupees Thirty Thousand) to the Petitioner within a period of TWELVE WEEKS from today, failing which the said amount would attract interest at the rate of 6% per annum from the date of the award of the Labour Court till it's actual payment.

14 In the peculiar facts of this case, I deem it proper to fix the responsibility on the Executive Engineer of the Kukadi Project Land Development, Division No.1, Ahmednagar, who was in-charge on the date the order of the Labour Court dated 23.12.2009 was passed directing the

Respondent/ Establishment, for refusing to produce the documents. The State Exchequer / taxpayers' money, in these circumstances, ought not to be burdened with this compensation. As such, the Respondent/ Establishment shall ensure that the said compensation of Rs.30,000/- (Rupees Thirty Thousand) is paid to the Petitioner from the salary of the Executive Engineer, who was in-charge on 23.12.2009.

15 Rule is made partly absolute in the above terms.

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(RAVINDRA V. GHUGE, J.)