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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4886 OF 2011

Ramdas Deoram Kahar,
Age : 51 years, Occ. Daily wager,
R/o. Derde Korhale, Taluka Kopargaon,
Dist. Ahmednagar.

...Petitioner...

Versus

State of Maharashtra,
Through Deputy Director for
Social Forestry, Sudke Mala,
Balika Ashram Road,
Taluka and District Ahmednagar.

...Respondent...

WITH

WRIT PETITION NO.8342 OF 2015

Ramdas Devram Kahar,
Age : 55 years, Occu. Nil,
R/o. At Post Dede Korhale,
Taluka Kopargaon,
District Ahmednagar

...Petitioner...

Versus

- 1 The State of Maharashtra,
Rural Development & Irrigation
Department, Mantralaya,
Mumbai.
 - 2 The Director of Social Forestry,
Maharashtra State,
Central Building, Pune.
 - 3 The Deputy Director of Social
Forestry, Social Forest
Department, Ahmednagar.
- ...Respondents...

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Shri P.V. Barde, Advocate for petitioner.

Shri V.V. Bhavthankar, Special Counsel with Shri V.G. Shelke, AGP for respondents.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.03.2016

ORAL JUDGMENT :

1] The first petition filed by the employee has been admitted on 26.7.2011 wherein the petitioner – employee, though has partly succeeded before the Labour Court, was deprived of back wages. In the second writ petition filed by the petitioner – employee, he has challenged the judgment of the Industrial Court dated 9.3.2015 by which his Complaint (ULP) No.57/2012 was dismissed.

2] The employee, who has filed both these petitions, submits that the first petition is restricted only to the extent of his claim for back wages. Insofar as the second petition is concerned, the Industrial Court has dismissed his complaint, which he had filed for seeking implementation of the award dated 27.12.2010 in Reference (IDA) No.27/2004.

3] The petitioner submits that the Labour Court has

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deprived him of the back wages while partly allowing his reference. The respondent – employer has not challenged the award of the Labour Court dated 27.12.2010. The Industrial Court, therefore, should have allowed his Complaint (ULP) No.57/2012 as there was no challenge to the award. He, therefore, prays that both his petitions be allowed.

4] Shri Bhavthankar, learned Advocate appearing on behalf of the respondent – management, submits that the management is now taking steps in 2016 to prefer a writ petition for challenging the award dated 27.12.2010. He, however, concedes that the said award has not been challenged for more than five years and due to procedural delays, the petition has not been filed.

5] Shri Bhavthankar submits that this matter may be adjourned so as to enable him to prefer a writ petition against the impugned award dated 27.12.2010.

6] In this backdrop, I have heard Shri Bhavthankar on the merits of the matter with regard to the said award, which the petitioner – employee has challenged only to the extent of the direction of the Labour Court to deprive him of back wages. The respondent relies upon

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its affidavit in reply dated 9.4.2012 filed in the first petition.

7] I have considered the submissions of the learned Advocates.

8] Several documents were produced by the respondent – management before the Deputy Commissioner of Labour, Nashik, with regard to the industrial dispute raised by the petitioner – employee u/s 2-A of the Industrial Disputes Act. All those documents later on became a part of the record in Reference (IDA) No.27/2004 as all the papers contained in the conciliation proceedings file have been transmitted to the Labour Court.

9] I find from the record referred to by the Labour Court that the seniority list at Exhibit U-13/1 indicates the petitioner at Sr.No.14. One Mr.Vasant Kajale is at Sr.No.15. Exhibit U-13/2 indicates that the respondent had called upon Mr.Vasant Kajale to join duties forthwith in the light of the order of the Industrial Court dated 15.11.2005 passed in Complaint (ULP) No.331/1993 by which Mr.Kajale had sought the implementation of the award.

10] I also find that the petitioner by his

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application dated 8.5.2007 had requested the respondent – management to permit him to join duties as juniors have been continued in employment.

11] The document at Exhibit U-15/1 indicates that the petitioner was working from 1987-88 and had completed 345 days in continuous employment. In the year 1988-89, he had worked for 259 days. In 1989-90, he had worked for 241 days. In the year 1990-91, he had worked for 298 days. In the year 1991-92, he had worked for 316 days. As such, from the date of reference i.e. the date of termination 4.5.1993, the petitioner had worked for 317 days in the preceding 12 Calender months.

12] These records produced by the management, which are a part of the conciliation proceedings, in my view, have rightly been considered by the Labour Court. Consequentially, the termination of the petitioner without compliance of Sections 25-F and 25-G has been interfered with and the Labour Court has rightly answered the reference in the affirmative.

13] I have considered the subsequent developments that have taken place with regard to the petitioner and the respondent pursuant to the filing of the first

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petition. The petitioner had worked for about 5 years and 11 months in between 1.6.1987 and 4.5.1993. He had worked for 2 years and 10 months in between 13.12.1995 till 3.8.1998. The impugned award is dated 27.12.2010. The total duration put in by the petitioner in employment is about 8 years and 9 months, which can be rounded off to 9 years.

14] When this Court considered the petition filed by the petitioner – employee and admitted the petition on 26.7.2011, the respondent – management had not challenged the said award. It is, therefore, more than five years that the respondent has not questioned the award. I, therefore, have no reason to interfere with the same though I have heard Shri V.V. Bhavthankar, learned Advocate for the respondent on the merits of the award. I find that there is no error in the award to the extent of granting reinstatement with continuity of service to the petitioner.

15] The issue in the first petition is, therefore, whether the petitioner could be said to be entitled for full back wages. The petitioner had deposed on oath before the Labour Court that he is out of employment and

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he has tried to obtain an alternative job. Despite his efforts, he could not secure a job and he, therefore, survived on daily wages.

16] The Hon'ble Supreme Court has held in the following four cases that when long spells of unemployment follow short spells of employment, it would be reasonable to quantify compensation rather than reinstating an employee :-

[1] *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohanlal* (2013 LLR 1009)

[2] *Assistant Engineer, Rajasthan Development Corporation & another v. Gitam Singh* [(2013) 5 SCC 136]

[3] *BSNL v. Man Singh* [(2012) 1 SCC 558] and

[4] *Jagbir Singh v. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327]

17] It is concluded by the Apex Court in the abovesaid cases that after a long tenure of unemployment, it would not be advisable to foist an employee on an employer. In doing so, the Hon'ble Court has concluded that compensation of about Rs.30,000/- per year of service would be reasonable and appropriate.

18] In the instant case, the petitioner has put in

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about 9 years service. It is not in dispute that the petitioner had worked for about 9 years and is out of employment for about 18 years. Despite the award in his favour and having not been challenged till today, the same has attained finality.

19] As such, considering the above recorded facts and circumstances and the ratio laid down by the learned Apex Court in the above referred four cases, I find that the respondent could very well be directed to pay compensation of Rs.2,70,000/- considering that the Apex Court has held that compensation of Rs.30,000/- per year in service is reasonable.

20] In the light of the above, the first petition is partly allowed with the direction to the respondent – Department to pay compensation of Rs.2,70,000/- to the petitioner – employee within a period of eight weeks from today, failing which, the same shall carry simple interest at the rate of 3% from the date of the judgment of the Labour Court i.e. 27.12.2010.

21] Rule is made partly absolute in the first petition i.e. Writ Petition No.4886/2011, whereas Rule is discharged in the second petition i.e. Writ Petition

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No.8342/2015. No order as to costs.

22] Needless to state that since the petitioner herein was a party to Complaint (ULP) No.246/1992 filed by his Union seeking benefits of permanency and which is subject matter of Writ Petition No.2034/2006, with the decision in these two petitions, the petitioner shall not stake any claim in Writ Petition No.2034/2006 in relation to Complaint (ULP) No.246/1992.

23] Copy of this judgment be placed on record in Writ Petition No.2034/2006.

(RAVINDRA V. GHUGE, J.)