

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

WRIT PETITION NO. 9080 OF 2016

- 1 The State of Maharashtra.
Through the Secretary,
Public Works Department,
Mantralaya, Mumbai.
- 2 The Superintending Engineer,
Public Works Division, Osmanabad.
- 3 The Executive Engineer,
Public Works Division, Osmanabad.
- 4 The Deputy Engineer,
Public Works Sub Division No.1,
Osmanabad.

...PETITIONER

-VERSUS-

Dnyaneshwar Anantrao Kulkarni,
Age : 42 years, Occupation : Nil,
R/o Ter, Tq. & Dist.Osmanabad.
Pin No.413509.

...RESPONDENT

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AGP for Petitioners : Shri P.N.Kutti.
Advocate for Respondent : Shri Deshmukh Rajendra S..

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 18th October, 2016**

Oral Judgment :

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

2 On 19.09.2016 while issuing notice, I had recorded the brief facts of the case as under:-

- "1. *Leave to add the complete address of the respondent. Addition be carried out within one week.*
2. *The petitioners are aggrieved by the ex-parte order dated 10.8.2000, delivered by the Labour Court, by which, Reference (IDA) No.90 of 1996 has been allowed. Grievance is that the respondent had worked from 1.3.1984 till 1.4.1985 and since he was a daily wager and there was no work available, he was disengaged. An industrial dispute is raised after 11 years. The respondent had approached this Court after the Labour Court set aside the ex-parte award. By judgment dated 1.7.2015, delivered by this Court in Writ Petition No.11605 of 2014, the Misc. Application filed by the petitioners for recalling the ex-parte judgment and award was held to be untenable. As such, on account of the observations set out in paragraph No.30 of the said judgment, the petitioners were granted the liberty to assail the ex-parte award in this Court.*
3. *Issue notice before admission to the respondent, returnable on 7.10.2016.*
4. *Till the next date of hearing in the matter, the Criminal Complaint pending before the Labour Court, Solapur / Latur shall be adjourned."*

3 It is in the above backdrop that this petition is being entertained.

4 The submissions of the learned AGP on behalf of the Petitioners have been recorded in paragraph 2 of my order dated

19.09.2016 reproduced above.

5 Shri Deshmukh, learned Advocate for the Respondent, has strenuously defended the ex-parte award dated 10.08.2000. He places reliance upon the affidavit in reply filed by the Respondent which is tendered today, to contend that it was on account of the lapse and negligence of the Petitioner that the Labour Court was compelled to deliver an ex-parte award. The said award was delivered almost 16 years ago and it would cause irreparable harm, manifest inconvenience and serious prejudice to the Respondent, if the said award is to be set aside.

6 He further submits that though the Respondent raised an industrial dispute after about 11 years having worked from 01.03.1984 till 01.04.1985, the Labour Court has balanced the equities by depriving the Respondent of back wages prior to 15.12.1995 which is the date on which the Industrial Dispute was raised by the Respondent. He further submits that this employment is the only source of income and as such, no interference is called for.

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

8 Keeping in view that the Respondent had worked from 01.03.1984 to 01.04.1985 which is a period of 13 months, the Respondent has been out of employment for the last about more than 31 years. His entry in employment on daily wages cannot be equated with an entry in employment as against a permanent vacant post. In public employment, back door entry, on the one hand, cannot be countenanced and on the other hand, there could not be an order of reinstatement of an employee, who has raised an industrial dispute after more than 11 years from the date of termination.

9 In the light of the above, I deem it appropriate to place reliance upon the following four judgments delivered by the Honourable Supreme Court wherein it has been concluded that after a short spell of employment, which is followed by a long period of unemployment, it would not be practicable to grant reinstatement with continuity in service:-

- (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].*

10 The Honourable Supreme Court in the above four judgments has concluded that Rs.30,000/- per year of service would be commensurate compensation in lieu of reinstatement with continuity and back wages.

11 The peculiar facts of this case need to be considered while granting compensation. The Petitioners neglected the proceedings before the Labour Court and after four years of pendency of the proceedings, the impugned ex-parte award was delivered. Thereafter, the Petitioners moved an application for recalling of the ex-parte award beyond 30 days from the date of its publication. The said issue was dealt with by this Court in the matter of *Dnyaneshwar Anantrao Kulkarni vs. The Superintendent Engineer, Public Works Division and others*, Writ Petition No.11605/2014 (Aurangabad Bench) decided on 01.07.2015, by which this Court concluded that the application for recalling the ex-parte award after 30 days of publication was not maintainable as the Labour Court was rendered *functus officio*.

12 In this entire process, the Respondent had to suffer the rigours of litigation. As such, though he has worked for one year and is entitled for compensation of Rs.30,000/-, I am awarding compensation of Rs.50,000/-. The amount of Rs.20,000/- above the compensation amount is towards the rigours of litigation which the Respondent has suffered on account of negligence and laxity on the part of the Petitioners.

13 This Writ Petition is, therefore, partly allowed and the impugned award dated 10.08.2000 is modified by granting compensation to the Respondent for an amount of Rs.50,000/- (Rupees Fifty Thousand) in lieu of reinstatement, continuity and back wages. The said amount shall be paid by the Petitioners within a period of TWELVE WEEKS from today, failing which the said amount shall carry interest at the rate of 6% per annum from August, 2000 till it's actual payment. The said amount of interest would then be recovered from Petitioner Nos.2 and 3 from their salaries. Needless to state, on account of delay in payment if the interest is required to be paid, the same shall not be paid from the State Exchequer and the same shall be paid from the salaries of Petitioner Nos.2 and 3.

14 Rule is made partly absolute in the above terms.