

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

WRIT PETITION NO. 9650 OF 2015

Kadar Mohiuddin Shaikh,
Age : 48 years, Occupation : Labour,
R/o At Post Loni, Taluka Jamkhed,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through Secretary for
Grampanchayat and Water
Preservation Department,
Mantralaya, Mumbai-32.
- 2 Director of Social Forestry,
Social Forestry Department,
Maharashtra State,
Pune.
- 3 Deputy Director,
Social Forestry Department,
Ahmednagar Setu Office,
Ahmednagar.

...RESPONDENTS

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Advocate for Petitioner : Shri Barde Parag Vijay

AGP for Respondent 1 : Shri S.B.Joshi.

Advocate for Respondents 2 and 3 : Shri Bhavthankar Vivek Vasantrao.

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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 I had heard the learned Advocate for the Petitioner and the learned AGP on behalf of Respondent No.1 while issuing notice on 19.09.2016. The said order dated 19.09.2016 reads as under:-

- "1. The petitioner has challenged the judgment of the Industrial Court, dated 23.2.2015, by which, his Complaint (ULP) No.76 of 2012 has been dismissed.
2. It is pointed out that after the petitioner joined service as a Watchman on daily wages from 1.3.1987, he was terminated on 5.6.1992. He preferred Complaint (ULP) No.221 of 1992, which was partly allowed by the Labour Court, granting reinstatement on his previous post with continuity of service and consequential benefits. He was deprived of the backwages.
3. It is further pointed out that Revision (ULP) No.67 of 2005 was dismissed by the Industrial Court on 3.11.2007. Writ Petition No.3772 of 2008 filed by the respondents was dismissed on 12.6.2009. Thereafter, the petitioner has been reinstated in service.
4. It is pointed out that Complaint (ULP) No.76 of 2012 was filed by the petitioner before the Industrial Court, claiming regularization in service, in the light of the Government Resolution dated 31.1.1996 and 16.8.2012. Grievance is that when the petitioner has been granted continuity in service, it presupposes that he has worked continuously. The conclusion of the Labour Court that the petitioner could not prove completion of 240 days in continuous employment and dismissed the complaint, is apparently by ignoring the earlier direction of the Labour Court, which has merged in the judgment of the Industrial

Court and this Court, that the petitioner had worked continuously.

5. *Issue notice before admission to the respondents, returnable on 3.10.2016.*
6. *Learned AGP waives service for all the respondents.*
7. *Leave is granted to the petitioner to file the relevant Government Resolutions on record."*

3 Shri Bhavthankar, learned Advocate appearing on behalf of Respondent Nos.2 and 3, has strenuously canvassed the following points while supporting the impugned judgment:-

- (a) Respondent Nos.2 and 3/ Department of Forestry is not an industry.
- (b) The work performed by the Petitioner on Employment Guarantee Scheme (EGS) cannot be taken into account while calculating 240 days of continuous employment.
- (c) Though the Petitioner was working on regular scheme also, intermittently he was working on EGS as well.
- (d) The chart placed on record today, which is marked as Exhibit X for identification, indicates that though the Petitioner may have worked for more than 240 days in 07 years in between 1987 to 1997, some of the days on which he had worked on EGS, cannot be included while reckoning the total number of days worked.

4 It cannot be ignored that the Petitioner had filed Complaint (ULP) No.221/1992 before the Labour Court challenging his illegal termination dated 05.06.1992 after having worked from 01.03.1987. The Labour Court had allowed the complaint and had granted reinstatement with continuity of service and consequential benefits, although the Petitioner was deprived of the back wages. The revision filed by the Department of Social Forestry was dismissed by the Industrial Court on 03.11.2007 and their Writ Petition No.3772/2008 was dismissed by this Court on 12.06.2009. In my view, the presumption, therefore, is that all objections raised by the Respondent/ Department with regard to the applicability of the MRTU & PULP Act, 1971 in the earlier round of litigation 25 years ago, have been dealt with and put to rest. It is in this backdrop that I am rejecting the submissions of Shri Bhavthankar.

5 It requires no debate that when the Labour Court has granted continuity in service, the Petitioner is presumed to have worked on all working days notwithstanding the fact that he has been deprived of back wages. However, grant of consequential benefits by the Labour Court accompanying reinstatement and continuity of service, therefore, puts the issue of completion of 240 days to rest.

6 The Industrial Court, in my view, has committed a palpable

error in reopening the whole issue to scrutinize as to whether, the Petitioner was working in continuous service. The above recorded facts pertaining to the earlier round of litigation were obviously ignored by the Industrial Court. For the said reason, the impugned judgment of the Industrial Court would not be sustainable.

7 The Government Resolutions dated 31.01.1996 and 16.10.2012 are placed on record. There is no dispute that the Petitioner is still in employment. Consequentially, he has been working for the past 29 years.

8 In the light of the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 23.02.2015 is quashed and set aside and Complaint (ULP) No.76/2012 stands partly allowed as under:-

- (a) Respondent No.3/ Department shall forward the proposal of the Petitioner to Respondent No.2/ Authority as provided for under the Government Resolutions dated 31.01.1996 and 16.10.2012, within a period of TWELVE WEEKS from today.
- (b) Respondent No.2 shall decide the said proposal in the light of the Government Resolutions referred above within a period of SIXTEEN WEEKS from the date of receipt of the proposal.

9 Though the Petitioner makes a statement that he is agreeable to receive benefits from 01.11.1994 from which date the Government Resolution dated 31.01.1996 is made effective, I leave it to Respondent No.2 to take an appropriate decision in this regard and on parity with similarly situated employees. Respondent No.2 shall decide the deemed date for calculating the benefits incidental thereto.

10 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)