

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

**WRIT PETITION NO. 11035 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 7589 OF 2016
IN
WRIT PETITION NO. 11035 OF 2015**

1. The Superintendent Engineer,
Beed Water Resources Project Circle,
Parli (V), Dist. Beed.

2. The Executive Engineer,
Lower Terna Canal Division No.2,
Latur Tq. & Dist. Laur.

..PETITIONERS

VERSUS

Tukaram Baliram Suryawanshi
Age: Major, Occu.: 55 years,
R/o c/o Com. Rajendra Vihire,
Trade Union Center,
Maharashtra Housing Society,
Barshi Road, Latur

..RESPONDENT

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Mr. P.R. Tandale, Advocate for petitioners.
Mr. V.D. Gunale, Advocate for respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 7th MARCH, 2016**

ORAL JUDGMENT :

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

2. The petitioners are aggrieved by the judgment and award dated 31.03.2015 by which the Labour Court has allowed Reference IDA No. 17/2009 thereby directing the petitioners to reinstate the respondent in service with continuity. The respondent is deprived of back wages for the entire past service.

3. The grievance of the petitioners-management is that the respondent used to be engaged intermittently whenever the work of wireman was available. Though he claimed to have worked continuously from 01.10.1988 to 31.12.1990, he has not put in continuous service during the said period. His admissions in the cross examination before the Labour Court have been reproduced on page nos. 9 and 10 of the memo of the petition which would indicate that he also admits that he was working whenever the work was offered to him. He has also admitted that there was no post of wireman available. He had not applied pursuant to any advertisement and was not selected to any post.

4. Mr. Tandale, learned Counsel for the petitioners therefore submits that the impugned award though partly answers

the reference in the affirmative, is unsustainable for yet another reason. The respondent claimed to have been terminated orally on 31.12.1990. He raised an industrial dispute under Section 2A of the Industrial Disputes Act, 1947 in 2009, which is practically 19 years after his purported termination. He therefore submits that the impugned award deserves to be quashed and set aside.

5. Mr. Gunale, learned counsel appearing on behalf of the respondent-employee strenuously defends the impugned award. In addition thereto, he relies on the civil application filed, praying for relief under Section 17B of the Industrial Disputes Act, 1947.

6. Mr. Gunale submits that the Labour Court has gone through the oral and documentary evidence. The impugned award is a finding on facts which cannot not be interfered with only because a second view is possible.

7. He further submits that the respondent had proved completion of 240 days in continuous employment.

Consequently he had proved non-compliance of Section 25F and 25G of the Industrial Disputes Act, 1947, thereby rendering his termination illegal. He therefore submits that his illegal termination has rightly been appreciated by the Labour Court and hence he has been granted reinstatement with continuity in service.

8. I have considered the submissions of the learned Counsels.

9. It is apparent that the respondent claimed to be in service with the petitioners from 01.10.1988 to 31.12.1990 which is a period of about 2 years and 3 months. He was working as a wireman. It is equally undisputed that neither was any advertisement published calling for applications with regard to the post of a wireman, nor had the respondent applied pursuant to any advertisement. So also, there was no selection process initiated by the petitioners for causing a recruitment to the post of a wireman.

10. The respondent has conceded in his cross examination that he used to work whenever the work of a wireman was

available. He further admitted that he had no documentary evidence to prove that he had worked for 240 days in the continuous and uninterrupted service of the petitioners. In this backdrop, I am of the view that the Labour Court has failed to consider these admissions of the respondent and the fact that there was no documentary evidence on record.

11. Though the Industrial Disputes Act does not prescribe any limitation for raising an industrial dispute under Section 2(k) or under Section 2A, it needs to be considered as to whether an employee can be permitted to be in deep slumber and wake up after a period of 19 years for raising an industrial dispute. The other aspect which is vital is as to whether any employer or an establishment could preserve documents pertaining to a short spell of employment of a temporary worker for a period of 15 or 20 years or more. In this back drop, the issue that becomes significant is as to whether such an industrial dispute could be termed as being a stale dispute or as to whether it is no dispute in the eyes of law. In the instant case, the respondent has raised an industrial dispute after 19 years.

12. Considering the total effect of the above recorded facts, I find that quantified compensation in lieu of reinstatement and continuity in service in the light of the ratio led down by the Hon'ble Supreme Court, would be a pragmatic approach. The learned Apex Court has concluded that short spells of employment followed by long spells of unemployment ought not to lead to an order of reinstatement and instead compensation can be quantified, in the following four judgments:-

- (i) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota Vs. Mohanlal, 2013 LLR 1009,*
- (ii) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, (2013) 5 SCC 136,*
- (iii) *BSNL Vs. Man Singh, (2012) 1 SCC 558,*
- (iv) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327.*

13. The learned Apex Court in the above referred four judgments has concluded that the compensation of about Rs.30,000/- per year of service put in by an employee would be an

appropriate compensation. In the instant case, the respondent employee has put in about two years in service.

14. Considering the above, this petition is partly allowed. The impugned award to the extent of directing reinstatement with continuity of service stands modified. The petitioners shall pay compensation of Rs.60,000/- to the respondent within a period of 12 weeks from today as quantified compensation.

15. Needless to state, all issues with regard to the employment and non-employment of the respondent are therefore put to rest with this direction of payment of compensation as above.

16. Rule is made partly absolute in the above terms.

17. Civil Application filed by the respondent would not survive in view of this judgment and hence is disposed off.

(RAVINDRA V. GHUGE, J.)