

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

WRIT PETITION NO. 9138 OF 2014

1 The Deputy Conservator of Forest,
 Aurangabad, Osmanpura,
 Aurangabad.

2 Range Forest Officer,
 Range Forest Office, Sillod,
 Tq.Sillod, Dist.Aurangabad.

...PETITIONERS

-VERSUS-

Ramji Pundlik Shinde,
Age : Major, Occupation : Nil,
R/o At Jambhai, Post. Relgaon,
Tq.Sillod, District Aurangabad.

...RESPONDENT

...

Advocate for Petitioners : Shri Gaddime Arvind N., Special Counsel with
Shri PN.Kutti, AGP.

Advocate for Respondent : Shri Shelke Avishkar S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th September, 2016

Oral Judgment :

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

2 The Petitioner/ Establishment is aggrieved by the judgment

and award dated 16.08.2012 delivered by the Labour Court by which Reference (IDA) NO.33/2000 has been allowed with costs and by setting aside the oral termination dated 25.08.1999, the Respondent/ Employee has been granted reinstatement with continuity of service along with 50% back wages.

3 I have considered the strenuous submissions of the learned Advocates for the Petitioners and the Respondent.

4 The learned Advocate for the Petitioner/ Establishment has taken me through the petition paper book, the Written Statement and the documents at Exhibits C-2, C-4 and C-12.

5 Shri Shelke, learned Advocate for the Respondent, has strenuously submitted that the Respondent was working with the Petitioner from 01.08.1991 till 24.08.1999. He was working under the Forest Officer. His last drawn wages were at the rate of Rs.37/- per day. The law of retrenchment under Section 25F and the principle of "last come first go" under Section 25G coupled with Section 25H of the Industrial Disputes Act, 1947 was not complied with. Having proved continuous employment for 240 days in each calender year of service, the Labour Court has rightly allowed the reference and has rightly granted

reinstatement with continuity of service and 50% back wages.

6 Insofar as the documents at Exhibits C-2, C-4 and C-12 are concerned, he insists that that these documents indicate the days worked by the Respondent. The identity card under the Employment Guarantee Scheme was not produced. Considering the fact that skeletal documents were produced by the Petitioner, the Labour Court was rightly convinced that the Respondent has a right to reinstatement.

7 I have gone through the Written Statement filed by the Petitioner before the Labour Court. The place of work, period of work, muster number under the Employment Guarantee Scheme (EGS) and total days of EGS working, have been specifically stated. Exhibits C-2, C-4 and C-12 are the documents which have been placed before the Labour Court indicating the place of work and the details of working of the Respondent. In my view, the whole case turns upon these documents produced by the Petitioner/ Establishment before the Labour Court because the Respondent has not produced even a single sheet of paper by way of documentary evidence. The case of the Respondent is wholly based on oral statements through an affidavit as well as the documents at Exhibits C-2, C-4 and C-12.

8 It is seen from the documents placed before the Labour Court that they pertain to the daily muster roll maintained by the Petitioner/ Establishment under the EGS. The name of the Respondent and the number of days worked is mentioned. The amount of payment made is mentioned. The signature of the Respondent on the revenue stamp is also available on each of such sheets. It is noteworthy that even the Respondent placed complete reliance on these documents and the Labour Court has also considered these documents while delivering the impugned award. On every such page maintained under the EGS, the signature of the Range Forest Officer (EGS), Sillod is clearly visible. These documents were proved before the Labour Court. The Labour Court has concluded on the basis of these documents that the Respondent had worked under the EGS from 1991 till December, 1995.

9 Considering the above, the only issue that remains to be looked into is as to whether, the documents at Exhibits C-2, C-4 and C-12 indicate that the Respondent was working on EGS during the period of January, 1996 till May, 1998. I have gone through these documents and so have the learned Advocates for the respective sides. There is no dispute that on the daily muster roll-cum-payment register maintained for the period of January, 1996 to May, 1998, the stamp indicating the amount of daily wages paid to the Respondent evidences that the said amount was

paid towards EGS working. The signature of the Range Forest Officer (EGS) is also appearing. The signature of the Respondent indicates that he has received the payment as mentioned on the said sheets. The Labour Court, in my view, has palpably erred in losing sight of these stamps indicating that the amounts were paid from the EGS funds by the Range Forest Officer (EGS) thereby, evidencing that the Respondent was working on EGS. The impugned judgment on this count is, therefore, unsustainable.

10 Shri Shelke has, thereafter, contended that for the period June, 1998 till August, 1999, the Petitioner produced only one register for September, 1998 which would indicate that the Respondent was working on EGS. However, no documents were produced for the months of June to August, 1998 and October, 1998 to August, 1999. If that be so, then it means that there was no evidence before the Labour Court to indicate that the Respondent was working from October, 1998 till August, 1999. However, if the contention of the Respondent is accepted that he had worked in that period, then the register of September, 1998 would be indicative of the fact that the Respondent continued to work on EGS. As such, after September, 1998 there was no evidence before the Labour Court that the Respondent had worked, whether, on EGS or otherwise.

11 In identical set of facts in **Writ Petition Nos.3433/2013 and 3490/2013** (*Rangnath Mahadu Katore vs. Deputy Forest Conservator*), this Court has delivered its judgment on 28.09.2016 and has quantified compensation of Rs.10,000/- to each of the employees towards costs of litigation.

12 In the light of the above, this Writ Petition is partly allowed. The impugned judgment and award dated 16.08.2012 is quashed and set aside and Reference (IDA) No.33/2000 is rejected.

13 However, as this petition has been filed on 09.09.2014, considering the effect of Section 17-B of the Industrial Disputes Act, 1947, the Respondent would have been entitled to last drawn wages at the rate of Rs.37/- per day and the average working days being about 24 per month. This amount of wages for the last 24 months under Section 17B in the light of the fact that the award had granted reinstatement to the Respondent, would be Rs.21,000/-. So also, the petition has been filed after two years.

14 The Petitioner has deposited the amount of Rs.76,128/- in this Court. Considering this aspect and the effect of Section 17B, the Respondent/ Employee is permitted to withdraw Rs.25,000/- (Rupees

Twenty Five Thousand) from this Court by producing tangible evidence of his identity in the nature of Voters Identity Card or Adhaar Card and an application duly signed and identified by the learned Advocate, while withdrawing the said amount, without any condition. Rest of the amount with interest can be withdrawn by the Petitioner/ Establishment from this Court.

15 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)