

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

WRIT PETITION NO. 9137 OF 2014

Deputy Conservator of Forest,
Vanvirtta, Osmanpura,
Aurangabad.

..Petitioner

Versus

Shri Nana Eknath Badhe,
At Borgaon, Post Ambelohal,
Tq. Gangapur, Dist. Aurangabad.

..Respondent

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Special Advocate for Petitioner : Shri Gaddime Arvind N.
a/w AGP Shri Kutti P.N.

Advocate for Respondent : Shri Undre V.S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 27, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the award dated 26.7.2011, by which, Reference (IDA) No.37 of 1993 has been partly allowed and

the respondent has been granted reinstatement, with continuity of service. Backwages are denied.

5. Learned Advocate for the petitioner strenuously contends that the respondent was never working on any scheme or project of the Forest Department. He was not working from 1981. He has worked for 328 days in 1988, 268 days in 1989 and 310 days in 1990, as a daily wage labourer. He was working under Employment Guarantee Scheme (“EGS”) for protection of the plantation from cattle. He is out of employment from 1991.

6. It is further submitted that the petitioner led oral and documentary evidence before the Labour Court. It was pointed out that the petitioner is not an “industry” and the respondent was working purely on EGS. He submits, on the basis of the record, that no documentary evidence was led by the petitioner and hence, the said observation in paragraph No.10 of the impugned judgment. He, however, submits that the daily wages of the respondent were paid from the EGS fund by the office of the Collector.

7. Learned Advocate for the respondent has strenuously defended the impugned award. He submits that the chart supplied by the Range Forest Officer (EGS), Gangapur, would indicate that the respondent was working continuously for three years. He tenders a

copy of the statement duly signed and attested by the Range Forest Officer (EGS), Gangapur in support of his contention. He further submits that the respondent is in need of employment and is willing to report for duties.

8. There is no dispute that though the petitioner filed a Written Statement and led oral evidence before the Labour Court, it did not produce the documents to support its contention that the respondent was working on EGS. The Chart tendered across the Bar by the learned Advocate for the respondent is marked as Exhibit "X" for identification. The RFO (EGS) acknowledges that the respondent had worked continuously for three years, though it is contended that he was working under the EGS.

9. The respondent is out of employment for 25 years after having worked for three years. In similar circumstances, the Honourable Apex Court has concluded that in cases of short tenure of employment, followed by long duration of unemployment, granting reinstatement with continuity would be impracticable. It concluded in the following four judgments, that compensation at the rate of Rs.30,000/- per year of service, put in by the workman, would be appropriate compensation in lieu of reinstatement:-

1. *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*

[2013 LLR 1009],

2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],*
3. *BSNL Vs. Man Singh [(2012) 1 SCC 558] and*
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].*

10. In the light of the above, this petition is partly allowed. The impugned award dated 26.7.2011 is modified and the petitioner is directed to pay compensation of Rs.90,000/- to the respondent within a period of twelve weeks from today, in lieu of reinstatement and continuity of service. In the event, the said compensation is not paid within the time frame, the petitioner shall pay interest @ 6% per annum on the said amount from August, 2011 and the interest amount shall be paid from the salaries of the officers, who may have caused the delay in complying with this order. The interest shall not be paid from the State exchequer.

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

(RAVINDRA V. GHUGE, J.)

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