

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

WRIT PETITION NO. 11039 OF 2015

Karbhari Narayan More,
Age : 53 years, Occ : Labour,
R/o Tanpurwadi, Taluka Pathardi,
District Ahmednagar.

....PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through the Secretary,
Public Works Department,
Mantralaya, Mumbai.
- 2 The Superintending Engineer,
Public Works Department,
Ahmednagar Circle,
Nagar Aurangabad Road,
Ahmednagar.
- 3 The Executive Engineer,
Public Works Department
(Works Division),
Nagar Aurangabad Road,
Ahmednagar.

...RESPONDENTS

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Advocate for Petitioner : Shri Barde Parag Vijay.

AGP for Respondents: Shri D.R.Korde.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th January, 2016

Oral Judgment:

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

2 The Petitioner is aggrieved by the judgment and order dated 21.07.2015 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No.55/2011 filed by the Petitioner has been dismissed.

3 Shri Barde, learned Advocate for the Petitioner/ Employee, submits that he had put forth twofold prayers in the complaint before the Industrial Court. Both prayers have been rejected by adopting a casual approach.

4 He submits that the Petitioner claimed to have worked with the Respondents from 01.12.1981 upto 31.12.1984. Since he was orally terminated from employment, he raised an industrial dispute after about 21 years and which was registered as Reference (IDA) No.15/2005 before the Labour Court at Ahmednagar. By the judgment and award dated 30.03.2010, the reference was partly allowed and the Petitioner was granted employment on daily rate basis as per the seniority list, but without continuity of service and without back wages.

5 Shri Barde further submits that the Respondents/ Employer preferred Writ Petition No.290/2011 before this Court and by the order dated 25.01.2011 passed by this Court, the Writ Petition was dismissed. This Court concluded that the award delivered by the Labour Court was a finding on facts. He, therefore, submits that the Respondents were under an obligation to implement the award forthwith. As there was no response from the Respondents, the Petitioner preferred Complaint (ULP) No.55/2011 before the Industrial Court invoking Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

6 He submits that besides seeking declaration of unfair labour practices against the Respondents in the complaint, the Petitioner had prayed in clause (b) that he should be given benefits of the Kalelkar Settlement on the basis of parity with comparable and similarly situated workmen. He had prayed in clause (c) that the award dated 30.03.2010 be implemented by the Respondents in letter and spirit.

7 The grievance voiced by the Petitioner is that the Industrial Court has erroneously concluded that the Petitioner has approached the Industrial Court after passage of about 21 years for seeking implementation of the award and hence, the Petitioner is disentitled for any equitable reliefs.

8 Shri Barde submits that when the award is dated 30.03.2010 and the complaint was filed in 2011 seeking implementation of the award after this Court dismissed the Writ Petition of the Respondents on 25.01.2011, by no stretch of imagination it could be concluded that the Petitioner had approached the Industrial Court after 21 years delay. He concedes that upon being orally terminated on 31.12.1984 he had approached the Labour Court after 21 years and surely not after 21 years to the Industrial Court.

9 He further submits that the Kalelkar Settlement was made applicable to the establishments like the Respondents and there is no dispute with regard to the same. The Respondents are, therefore, under an obligation to extend benefits of the Kalelkar Settlement to such employees who are entitled therefor. The Petitioner had filed the complaint on the basis of the award dated 30.03.2010. As such, even if the Industrial Court was convinced that the Petitioner may not be entitled for benefits flowing through the Kalelkar Settlement, the Industrial Court could not have ignored the award dated 30.03.2010. He, therefore, prays that the Respondents be directed to implement the said award.

10 The learned AGP appearing for the Respondents submits that

the Petitioner has put in hardly about 2 to 3 years in employment. Since 01.01.1985 he is not in employment. Even if it is assumed that he has put in three years in service, he is out of employment for the past 31 years as on date. He, therefore, supports the impugned judgment of the Industrial Court and prays for the dismissal of this petition.

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

12 There can be no debate that the Respondents were under an obligation to implement the award dated 30.03.2010 after this Court dismissed the petition filed by them by its order dated 25.01.2011. For the past five years, the award has not been implemented. It also appears that the Petitioner has attained the age of superannuation considering his date of birth being 01.06.1956. As such, there cannot be a direction to the Respondents to allot the work to the Petitioner pursuant to the award dated 30.03.2010.

13 The Apex Court in the following four cases has held that quantifying compensation in peculiar circumstances would be more pragmatic and reasonable:-

(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].

14 In the instant case, the Petitioner is out of employment for the past about 30 years. Nevertheless, the Respondents were obliged to allot him the work when their Writ Petition was dismissed by this Court on 25.01.2011. The age of retirement of employees in the Respondent Establishment is 58 years. Consequentially, had the award been implemented after the dismissal of the Respondents' petition, the Petitioner would have worked till 31.05.2014 which is about 03 and ½ years after the dismissal of the writ petition. I find that this aspect needs to be taken into account while quantifying the compensation.

15 In the light of the above, the impugned judgment and order is modified by directing the Respondents to pay the compensation of Rs.1,25,000/- (Rupees One Lac Twenty Five Thousand) to the Petitioner/ Employee, in lieu of reinstatement and employment upto 31.05.2014,

within a period of TWELVE WEEKS from today, failing which, the said amount shall carry interest at the rate of 6% per annum from the date of this order.

16 Considering the compensation awarded as above, the Petitioner would not be entitled to any benefit which would have been available to him under the award dated 30.03.2010 delivered by the Labour Court in Reference (IDA) No.15/2005.

17 This Writ Petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)