

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9689 OF 2016

THE SUB DIVISIONAL AGRICULTURE OFFICER,
SUB DIVISION, PARBHANI
VERSUS
SAYYAD RUSTUM SAYYAD SHARIF

WITH

WRIT PETITION NO. 9701 OF 2016

THE SUB DIVISIONAL AGRICULTURE OFFICER,
SUB DIVISION, PARBHANI
VERSUS
SAYYAD KALIM SAYYAD RUSTUM

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AGP for Petitioner : Shri P.N.Kutti

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 27, 2016

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PER COURT :-

1. The petitioner is aggrieved by the judgment dated 20.8.2016 delivered by the Industrial Court in both these matters, by which, Revision (ULP) Nos. 188 of 2013 and 189 of 2013 have been dismissed and the judgment of the Labour Court, dated 19.11.2013 in Complaint (ULP) Nos.10 and 11 of 2009 have been sustained.

2. The learned AGP has strenuously criticized the impugned judgments. He submits that both the respondents are identically placed. Both of them claimed to have been orally terminated on

20.9.2005 and 1.10.2005 respectively. Both of them were working from 1.11.1998 till their oral termination. The petitioner resisted their complaints by filing their written statement and denying the tenure of employment. It was brought to the notice of the Labour Court that both the respondents were working intermittently and had not completed 240 days in continuous employment. They were in fact, engaged on contractual basis. They used to be paid their wages only when they worked.

3. The learned AGP further points out that the Labour Court had erroneously concluded that the respondents were working continuously and their oral termination amounts to illegal retrenchment. The Labour Court ought to have considered that both the respondents were only daily wagers. It was a contractual employment. No posts are vacant so as to allow the respondents to work on the same. Both of them were working on seasonal activity. The Government Resolution dated 10.9.2001 indicates that the Government of Maharashtra has decided not to create posts for seasonal worker and the same should be done on contract basis. Had the Labour and Industrial Courts considered these aspects, the impugned order would not have been passed.

4. The learned AGP points out the grounds raised in the petition and contends that the respondents should not have been granted

reinstatement in service, notwithstanding that they have been deprived of the backwages.

5. I have considered the submissions of the petitioner and have gone through the petition paper book with his assistance.

6. Both the respondents had approached the Labour Court alleging oral termination after having worked for seven years. Both led oral evidence before the Labour Court. In their cross-examination, they maintained that they have worked continuously and had put in seven years in employment.

7. The Labour Court had directed the petitioner / management by an order below Exhibit U-11 and U-10 respectively to produce the muster rolls with regard to these two respondents. Despite these directions, the petitioners chose to keep the muster rolls away from the Labour Court. It is equally noteworthy that during the course of arguments before the Industrial Court in the Revision Petition, the Industrial Court had called upon the petitioner to make a statement as to whether the department is in a position to assist the Court by producing relevant record, so as to consider whether the matter deserved to be remanded to the Labour Court for a fresh hearing. The petitioner expressed its inability to produce the record. As such, it is evident that the petitioner did not desire that the Court should

have a look at the record indicating whether the respondents had continuously worked with the petitioners.

8. The petitioners have tried to suggest that from 1988 till 2003-2004, the respondents were working directly with the petitioner and from 2004 till their oral termination in September / October 2005, they were working on contractual basis. However, no record was produced before the Labour Court. Similarly, it is not the case of the petitioners that they had floated a tender for any contract and that any contractor has deployed the respondents as contract labourers from 2004. Besides making a bald statement that the respondents were working on contract basis, no document was produced to support this contention.

9. It is in the above backdrop that the Labour Court directed the petitioner to reinstate the respondent with continuity and deprive the respondent of the backwages. Admittedly, the respondents were working on daily wages. So also, it is not disputed that neither have the respondents prayed for permanency, nor could their claim for permanency be entertained by the Labour Court, inasmuch as, the Labour Court has not directed the absorption or regularization of the respondents. It has simply directed the reinstatement of the respondents with continuity and without backwages. As such the contention of the petitioners that they were no posts available could

be considered at an appropriate time, if the respondents make any claim for regularization in future.

10. In the light of the above, I do not find that the impugned judgments could be termed as being perverse or erroneous, especially in the light of the fact that the petitioners have not complied with the law of retrenchment while orally terminating the respondents after having worked for seven years.

11. These petitions being devoid of merits are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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