

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

WRIT PETITION NO. 11063 OF 2015

Gafoor Baig Chand Baig Choudhari
Age: 52 years, Occu.: Labour,
R/o At Post Naregaon, Near Municipal School,
Rahemat Nagar, Aurangabad,
Tq. & Dist. Aurangabad.

..PETITIONER

VERSUS

1. Executive Engineer,
Minor Irrigation, Division No.1,
Sinchan Bhawan, Jalna Road, Aurangabad.

2. Executive Engineer,
Minor Irrigation (Local Sector),
Behind Gajanan Mandir,
Garkheda Parisar, Aurangabad.

..RESPONDENTS

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Mr. M.K. Bhosale, Advocate holding for Mr. P.V. Barde, Advocate for petitioner.

Mr. D.R. Korde, AGP for respondents.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 21st MARCH, 2016**

ORAL JUDGMENT :

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

2. The petitioner-employee is aggrieved by the judgment and award dated 30.04.2015 delivered by the Labour Court, Jalna by which Reference IDA No. 2/2009 has been answered in the negative.

3. The petitioner submits that he was initially working on daily wages with the respondents from 01.11.1981 to 26.09.1983. From 01.08.1983, he is continuously working with the respondents till his oral termination with effect from 01.07.1998. He became eligible for the benefits of Kalelkar Award on 01.11.1986.

4. He submits that he preferred an Application IDA No. 18/1995 while in service against the respondents before the Labour Court, Aurangabad claiming arrears of wages as per the Kalelkar Award. By the judgment and order dated 29.07.2002, the application was allowed and the respondents were directed to pay to the petitioner the unpaid/arrears of wages to the tune of Rs.92,609/- as per the benefits of the Kalelkar Award.

5. The petitioner submits that he had to resort to execution proceedings for seeking implementation of the judgment of the Labour Court dated 29.07.2002, that eventually the said amount was paid in 2007.

6. It is further submitted that the petitioner thereafter raised an industrial dispute as against his termination in 2008 and the matter was

referred to the Labour Court in 2009. By the impugned judgment, the reference was rejected.

7. The petitioner strenuously submits that the Labour Court lost sight of the fact that he was working from 1981 till 30.06.1998. Since he was eligible under the Kalelkar Award, the Labour Court allowed his claim under Section 33 C(2) of the Industrial Disputes Act, 1947. An employee working under EGS is not entitled for the benefits of Kalelkar Award which was lost sight by the Labour Court while rejecting the reference. It is therefore submitted that this petition be allowed and the petitioner be granted reinstatement with continuity and full back wages from 01.07.1998.

8. The learned AGP appearing on behalf of the respondents has defended the order. Contention is that the respondents had specifically contended that the petitioner was working on EGS. An employee working on EGS cannot make a claim against termination or for regularisation or for continuation. The Labour Court has rightly considered this fact and has rejected the claim of the petitioner.

9. It is further stated that the State Authorities normally preserve documents for a period of about five years. Since the petitioner was

working on EGS, the documents pertaining to his engagement were destroyed five years after his termination. He raised an industrial dispute after 11 years and as such, the respondents did not have any document to indicate that he was working on EGS. So also, the petitioner did not produce any documentary evidence to establish that he was working continuously and in the uninterrupted service of the respondent. It is therefore prayed that this petition be dismissed.

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

11. It is not in dispute that the application under Section 33 C(2) seeking arrears of wages has been allowed by the Labour Court in 2002. By allowing the said Application IDA No. 18/1995, the contention of the petitioner that he was working as a watchman and was covered by the Kalelkar Award, now cannot be disputed by the respondents once it has been accepted by the Labour Court. It is equally undisputed that the respondents did not challenge the judgment of the Labour Court by which his application seeking arrears of wages was allowed.

12. On the one hand, the respondent-department has destroyed the documents pertaining to EGS workers after five years and on the other hand the petitioner slept for 11 years before raising an industrial

dispute. Though the Industrial Disputes Act does not prescribe any limitation for raising an industrial dispute under Section 2(k) or under Section 2-A, the fact remains that neither of the parties led any documentary evidence before the Labour Court. Besides their oral statements, there was no document before the Labour Court.

13. I quite see that the delay caused by the petitioner in raising an industrial dispute has created this difficult situation for himself. Nevertheless, the Labour Court could not have lost sight of the fact that his claim for arrears of wages as per the benefits of the Kalelkar Award were accepted by the Labour Court and the judgment of the Labour Court dated 29.07.2002 has not been challenged by the respondents. By paying the amount to the petitioner in 2007, the respondents can therefore be said to have conceded that he was entitled for the Kalelkar Award which therefore disproves that he was working on EGS.

14. The petitioner is out of employment for the last 18 years. He is 56 years old today. Since he failed to produce any evidence before the Labour Court with regard to his continuous and uninterrupted employment, the Labour Court has rejected the reference. Had he approached the Labour Court immediately after his oral termination, he would have been in some position in making the respondents produce

documents with regard to his service tenure and the basis on which his unpaid salary was calculated. The Labour Court has considered his earlier litigation under Section 33 C(2) and has concluded that the arrears of wages paid to him were towards unpaid daily wages. There was nothing before the Labour Court to indicate that the said arrears were calculated on the basis of the provisions flowing from the Kalelkar Award.

15. It is also undisputed that the petitioner was working on the percolation tank project. After the project was completed, the petitioner was left with no work as a watchman. It was in these circumstances that the Labour Court concluded that he was disengaged on account of completion of the percolation tank project.

16. In the light of the above, I do not find that any interference is called for in the impugned judgment. This petition is therefore dismissed. Rule is discharged.

17. No costs.

(RAVINDRA V. GHUGE, J.)