

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9104 OF 2012
AND
CIVIL APPLICATION NO.6891 OF 2015

The State of Maharashtra
Through the Deputy
Conservator of Forest,
Nanded Forest Division,
Near Mahatma Gandhi Statute,
Nanded.

..Petitioner

Versus

Tukaram Nagorao Bhise, Died,
Through his L.Rs.

1. Trivinibai Tukaram Bhise
Age 56 years, Occ. Household

2. Pandurang Tukaram Bhise
Age 42 years, Occ. Agriculture,

3. Maroti Tukaram Bhise
Age 36 years, Occ. Agriculture,

4. Nilabai Tukaram Bhise
Age 31 years, Occ. Household

5. Sulabai Tukaram Bhise
Age 31 years, Occ. Household

All R/o Wagad, Tq. Bhokar,
District Nanded.

..Respondents

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Special Advocate for Petitioners : Shri A.N.Gaddime
a/w Shri P.N.Kutti, AGP

Advocate for Respondent : Shri A.S.Shelke

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 22, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Despite the objection of the learned Advocate for the respondents in Civil Application, the Civil Application is allowed in the light of the reasons set out therein. Delay of 303 days is condoned and the legal heirs of the deceased respondent are permitted to be brought on record in the petition.
3. Addition be carried out forthwith.
2. Rule.
3. By consent, Rule in Writ Petition is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the award dated 19.1.2011, by which, the Reference (IDA) No. 1 of 2007 has been allowed and the respondent has been granted reinstatement with

continuity in service. Back wages are denied. Respondent has not challenged the said award.

5. I have considered the strenuous submissions of the learned Advocates for the respective sides.

6. I find from the impugned award that there was not a shred of evidence before the Labour Court so as to conclude that the oral termination of the respondent would amount to illegal retrenchment under Section 25F of the Industrial Disputes Act. A notice for production of documents was filed by the respondent, which is said to have been allowed. However, the petitioner, who had taken a specific stand in its written statement that the respondent was working on Employment Guarantee Scheme (“EGS”) and the proceedings were untenable, did not take the efforts to produce even a single sheet of paper by way of documentary evidence.

7. It is settled law that persons deployed on EGS cannot seek reinstatement or continued employment as it is a benevolent scheme for creating and providing work for the unemployed persons. Yet, the petitioner did not produce any evidence and

practically compelled the labour Court to draw an adverse inference in favour of the respondent.

8. Learned Advocate for the petitioner has placed on record a statement of number of days worked by the respondent, which is marked as Exhibit "X" for identification. It indicates that the respondent was working for 246 days in the year 2013, 106 days in 2012, and 92 days in 1999. In between 2000 to 2011, the respondent has not worked for a single day, is the contention of the petitioners.

9. It is clarified by Shri Gaddime that the impugned award was implemented by the petitioners and consequentially, the respondent was reinstated in service and hence he has worked in 2012 and 2013.

10. In the light of the above, it cannot be ignored that after the reinstatement of the respondent he has passed away on 28.5.2014 and was in employment. In this backdrop, I am not inclined to reopen the whole issue as regards the contention of the petitioner that the Labour Court has lost sight of the fact that the respondent was working on EGS.

11. As such, this petition is disposed off with the observation that the widow of the respondent would be entitled for gratuity and such other benefits, as may be available in law. Gratuity to be calculated by considering his last drawn wages and in light of the fact that he was granted continuity in service from 1.7.1996.

12. With the above observations, Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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