

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9637 OF 2012

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

..Petitioner

Versus

Madhav Umaji Mekale,
at Bachoti, Post Wagad,
Tq. Bhokar, Dist. Nanded.

..Respondent

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

Advocate for Respondent : Shri Shelke Avishkar 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 19.1.2011, by

which, Reference IDA No.2 of 2007 has been allowed and the petitioner is directed to reinstate the respondent in service with continuity. Backwages have been denied.

5. Shri Gaddime, learned Advocate for the petitioner has strenuously contended as under:-

- (a) The petitioner is not an “industry” under Section 2(j) of the Industrial Disputes Act, 1947.
- (b) Though the respondent claims to be working from 15.7.1996 till 1.4.2005, as a Watchman, he was actually working on the Employment Guarantee Scheme (“EGS”).
- (c) His daily wages were paid from the funds allotted to the EGS by the Collector of the said district.
- (d) The Muster Roll indicates that the respondent was working on EGS.
- (e) The respondent has been reinstated on 16.8.2012.
- (f) The petitioner did not lead oral and documentary evidence and hence the Labour Court has allowed the Reference.

6. Shri Shelke, learned Advocate has strenuously opposed the petition. He contends that the Reference proceedings instituted in

2007 have resulted in the award dated 19.1.2011, which is practically after 4 years. The petitioner has been negligent and merely filed a Written Statement, but did not lead oral and documentary evidence. Besides raising contentious issues, the petitioner did not contradict the case of the respondent and hence the Reference was allowed. He, therefore, prays that this petition deserves to be dismissed with costs or in the event, the Court is inclined to remand the matter to the Labour Court, heavy costs may be imposed on the petitioner.

7. I have considered the submissions of the learned Advocates and have gone through the bunch of papers tendered across the Bar by the petitioners.

8. On the basis of the papers tendered today, Shri Gaddime points out the attendance register, on the basis of which he contends that the respondent was always working on EGS. He, however, has no explanation as to why has the Deputy Conservator of Forests, Nanded Forests Division, who was the first party in the Reference proceedings, has not participated before the Labour Court and has not led evidence. He, however, submits that as the petitioner did not participate in the proceedings, an employee working on the EGS is likely to be foisted upon the petitioner.

9. I have dealt with a large number of such cases and invariably it

is noticed that the State or its instrumentalities, do not participate in the proceedings before the Labour / Industrial Court / Tribunal. The matters are not conducted with seriousness. After the verdict is delivered against the establishment, it is strenuously canvassed before this Court that because the department did not contest the matter, that the judgment has been delivered against the department. The case on hand is yet another example of the kind.

10. From the papers tendered across the Bar, it appears that the respondent has been working from 1996 till March, 2005. The issue is as to whether he was working on EGS or on a project or scheme of the Forest Department. It ought not to happen that a person working on EGS is foisted on the petitioner as the department did not participate in the proceedings before the Labour Court. It is for these reasons that I am remanding Reference (IDA) No.2 of 2007 to the Labour Court, Nanded for a decision afresh, but by imposing costs on the petitioner.

11. Shri Shelke points out that the petitioner has issued a letter dated 14.9.2016, thereby, shifting the respondent from Survey No.51, Mauje Wagad, where he was reinstated on 16.8.2012 as a Watchman, to a Nursery Part II, under the Maharashtra Rural Employment Guarantee Scheme, which is about 25 kms. away from the place at which the respondent is presently working. Since the matter is being

remanded, the interest of the petitioner will also have to be protected since he is vulnerable to the act of the petitioner in shifting him to EGS, which is likely to defeat his claim before the Labour Court.

12. In the light of the above, the impugned award dated 19.1.2011, is quashed and set aside. Reference (IDA) No.2 of 2007 is remitted back to the Labour Court, Nanded on the following conditions:-

(A) The Deputy Conservator of Forests, Nanded Forest Division, who was in charge of the department at the time of the recording of oral evidence, when the respondent filed his affidavit Exhibit U-5, shall pay costs of Rs.15,000/- (Rs. Fifteen Thousand only/-) from his own salary to the respondent / employee, by depositing the said amount before the Labour Court, Nanded within six weeks from today.

I am issuing the above direction since the laxity and negligence shown by the concerned officer needs to be penalised and the State exchequer ought not to be burdened for the manner of conducting the case.

(B) The litigating sides shall appear before the Labour Court on 14.10.2016.

(C) Formal notices need not be issued. After the amount is deposited, the respondent shall withdraw the same as costs.

(D) After appearing before the Labour Court, the petitioner shall tender it's oral and documentary evidence expeditiously.

(E) The Labour Court shall decide the Reference proceedings as expeditiously as possible and preferably by the end of June, 2017.

(F) Till the decision of the Labour Court in the Reference proceedings, the respondent shall continue to work at Survey N.51, Mauje Wagad.

(G) Since the above direction is an interim arrangement, the Labour Court shall decide the Reference on it's own merits.

(H) All contentions of the litigating sides are kept open.

13. Writ Petition is partly allowed accordingly. Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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