

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

WRIT PETITION NO. 10164 OF 2014

Shivaji Murlidhar Jadhav
Age: 50 years, Occu.: Nil,
R/o Jadhav Galli, Kasba Vibhag,
Kille Dharur, Tq. Dharur, Dist. Beed.

..PETITIONER

VERSUS

The Chief Officer,
Municipal Council, Kille Dharur,
Tq. Dharur, Dist. Beed.

..RESPONDENT

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Mr. S.N. Rodge, Advocate for petitioner.
Mr. Arun Rakh, Advocate holding for Mr. N.D. Kendre, Advocate for
respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 23rd FEBRUARY, 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 20.08.2013 delivered by the Industrial Court, Aurangabad by

which Revision ULP No. 31/2013 filed by the respondent-municipal council has been allowed and the judgment of the Labour Court dated 26.03.2010 allowing the Complaint ULP No. 78/1999 has been quashed and set aside.

3. The learned Counsel for the petitioner has strenuously criticized the impugned judgment. His contention is that he had discharged the onus and burden of proving completion of 240 days before the Labour Court. The petitioner was working from 10.09.1997 till 30.04.1999 as a daily wager. He was orally terminated. By the complaint filed by the petitioner, the oral termination was assailed on the ground that Sections 25F and G of the Industrial Disputes Act, 1947 have not been complied with. Juniors have been retained in employment while terminating the petitioner.

4. He further submits that he filed an affidavit in lieu of his examination in chief. He was not cross examined by the respondent and hence his oral evidence has gone unchallenged.

5. He further submits that he had produced a certificate dated 04.01.1999 indicating that he was in employment. The said certificate was appreciated by the Labour Court. The Municipal Council had written a letter to the District Collector on 26.05.1999 which indicates that the petitioner was in employment. In this back drop, since the respondent did not challenge the evidence of the petitioner, the Labour Court has rightly appreciated the complaint and has granted relief of reinstatement with continuity of service. The petitioner is denied back wages.

6. He then submits that the Industrial Court has exceeded its jurisdiction in allowing the revision petition and quashing the judgment of the Labour Court. In its revisional jurisdiction, the scope of interference was very narrow and the Industrial Court has therefore exceeded its jurisdiction. He therefore prays that this petition be allowed and the judgment of the Industrial Court be quashed and set aside.

7. The learned Counsel for the respondent has supported the impugned judgment. His contention is that the burden of

proving completion of 240 days has to be discharged by the petitioner. Merely because the respondent did not participate in the proceedings before the Labour Court would not mean that the affidavit filed by the petitioner deserves to be accepted. He therefore prays that this petition be dismissed.

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

9. It is trite law that the onus and burden of proving completion of 240 days initially lies on the shoulders of the complainant-employee. There is no dispute that the respondent did not cross examine the petitioner. However, the complaint filed by the petitioner cannot be allowed merely because he has not been cross examined on the affidavit filed in the case. It is settled law that the complaint cannot be allowed merely on the basis of an affidavit.

10. The petitioner could have issued a notice for production of documents so as to ensure that the documents pertaining to his

attendance and payment of daily wages could have been brought on record. No such notice for production of documents has been filed by the petitioner. The oral statement of the petitioner and the certificate, could not have led the Labour Court to conclude that the petitioner has been working continuously and in the uninterrupted service of the respondent. What was required to be established was that the certificate of experience was issued by a competent authority and the same was binding upon the respondent.

11. In the light of the the above, I do not find that the impugned judgment of the Industrial Court which considers all these aspects, could be termed as being perverse or erroneous.

12. This petition is devoid of merits and is therefore dismissed.

13. Rule is discharged.

(RAVINDRA V. GHUGE, J.)