

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

WRIT PETITION NO. 3866 OF 2016

1 Maharashtra State Road Development
Corporation Limited,
Camp Office, Bandhkam Bhavan,
Adalat Road, Aurangabad.
Through its Chief Engineer.

2 Maharashtra State Road
Development Corporation Limited,
Snehnagar, District Nanded.
Through its Executive Engineer.

...PETITIONERS

-VERSUS-

Santosh Manikrao Kulkarni,
Age : 36 years, Occupation : Nil,
R/o Near Janashakti Wachak
Chalwal, (Old Ganesh Library),
Nanalpeth, Parbhani.

...RESPONDENT

**WITH
CIVIL APPLICATION NO.6324 OF 2016
IN WP/3866/2016**

**MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD
THROUGH ITS CHIEF ENGINEER AND
VERSUS
SANTOSH MANIKRAO KULKARNI**

**WITH
WRIT PETITION NO.4599 OF 2016**

Santosh Manikrao Kulkarni,
Age : 40 years, Occupation : Nil,
R/o Near Janashakti Wachak
Chalwal, (Old Ganesh Library),

Nanalpeth, Parbhani.

...PETITIONER

-VERSUS-

1 The Chief Engineer.
Maharashtra State Road Development
Corporation Limited,
Camp Office, Bandhkam Bhavan,
Adalat Road, Aurangabad.

2 The Executive Engineer.
Maharashtra State Road
Development Corporation Limited,
Snehnagar, District Nanded.

...RESPONDENTS

...
Advocate for the Employer : Ms.Neha Kamble a/w Shri Adwant S.V.
Advocate for the Employee : Shri Kedar Balbhim R.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th August, 2016

Oral Judgment :

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

2 The first Writ Petition is filed by the Maharashtra State Road
Development Corporation (MSRDC) in which the Respondent is the
Employee. The second petition is filed by the Employee in which the
MSRDC is the Respondent. For the sake of brevity, the parties to this
litigation are being referred to as “the Employer” and “the Employee”.

3 The Employer as well as the Employee are aggrieved by the judgment and order dated 19.09.2011 passed by the Labour Court in Complaint (ULP) No.229/2010 and the judgment dated 03.10.2015 delivered by the Industrial Court in Revision (ULP) No.68/2011.

4 The Employee was appointed as a Clerk on 01.04.2007. He was terminated by letter No.679 dated 23.10.2008. As such, he had worked for about 18 months with the Employer. The Employee preferred Complaint (ULP) No.229/2010 alleging illegal retrenchment since Section 25-F of the Industrial Disputes Act, 1947 was not complied with. The Employer took a stand that the work for which the Employee was engaged, was meant for the particular project and the Employer, after undertaking the project of completion of road in the Nanded area, had set up a temporary office.

5 There is no dispute that there was no advertisement calling for applications and there was no selection process undertaken by the Employer for recruiting people. The fact remains that the project work was undertaken for completing a limited work and the project thereafter, has concluded and the Employer has wound up it's office at the said place. The project was undertaken under the Integrated Road Development

Project (IRDP).

6 The grievance of the Employee is that when he has completed 240 days in continuous employment, the law of retrenchment becomes applicable and the Employer should have complied with the law of retrenchment prior to dispensing with the services of the Employee. Reliance is placed on the judgment of the Honourable Supreme Court in the matter of *Sonepat Cooperative Sugar Mills Ltd. vs. Rakesh Kumar*, **2005(13) SCC 578**.

7 In the *Sonepat Cooperative Sugar Mills judgment* (supra), the Sugar Factory was permanently situated at a particular place. The Factory continued and the work performed by the Employee was continuously available. In the said backdrop, the Management of the Factory took a stand that the Employee was engaged for a temporary period and till the project lasted and Section 2(oo)(bb) of the Industrial Disputes Act, 1947 would become applicable. The Honourable Supreme Court concluded that the work performed by the Employee was of perennial nature and the Factory continued and its manufacturing activity also continued.

8 In the instant case, there is no dispute that the Employer had undertaken the project of completing the portion of the road. It had

erected a temporary office at the project site. The Employee was temporarily engaged. There was no advertisement indicating that the Employer as a Corporation had certain permanent vacancies and hence, the applications were being called for filling up permanent vacancies.

9 In identical set of facts in the matter of *MSRDC vs. Siddharth Rohidas Sonkamble*, Writ Petition Nos.1787/2015 and 8216/2015, this Court by its judgment dated 29.07.2016 has concluded that considering that a temporary office was erected and the employees were engaged purely for the project work, Section 2(o)(bb) of the Industrial Disputes Act, 1947 becomes applicable. However, since the Employee was armed with the judgment of the Labour Court based on adverse inferences thereby granting reinstatement in service, this Court had quantified compensation of Rs.50,000/- to be paid to the Employee in lieu of the order of reinstatement and continuity of service.

10 In the light of the facts emerging from these cases and considering the earlier judgment of this Court dated 29.07.2016, I am unable to accept the submissions of the learned Advocate for the Employee that a different view deserves to be taken. Consequentially, the relief granted by this Court by its judgment dated 29.07.2016 can also be extended to the Employee in this case.

11 In the light of the above, the Writ Petition filed by the Employer is partly allowed. The impugned judgment is modified and the Employee is granted compensation of Rs.50,000/- (Rupees Fifty Thousand) for having worked for 18 months with the Employer (rounded off to two years). The Employer shall, therefore, pay the amount of Rs.50,000/- to the Employee directly within a period of TWELVE WEEKS from today. If the amount is not paid within 12 weeks as directed above, the same shall carry interest at the rate of 6% per annum from the date of the judgment of the Labour Court till it's actual payment. Rule is made partly absolute in the above terms.

12 Consequently, the Writ Petition filed by the Employee seeking full back-wages and continuity in service, stands dismissed. Rule is discharged.

13 The pending Civil Application, if any, does not survive and the same is also disposed of.