

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1869 OF 2016

1. The Superintending Engineer,
Osmanabad Irrigation Circle,
Osmanabad,

2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad, Dist.Osmanabad

..Petitioners

Versus

Suresh Sidram Parde,
Age-47 years, Occu-Nil,
R/o Sanja Road, Sambhaji Nagar,
Osmanabad, Dist.Osmanabad

..Respondent

Mr.P.R.Tandale, Advocate for the petitioner.
Mr.K.M.Nagarkar, Advocate for the respondent.

CORAM : RAVINDRA V. GHUGE, J.
Dated : April 16, 2016

ORAL JUDGMENT :-

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

2. I have heard Mr.Tandale and Mr.Nagarkar, learned Advocates on behalf of the petitioners and the respondent/employee at length.

3. Considering their submissions, it is revealed that the respondent has stated in paragraph No.1 and 2 of the Complaint (ULP) No.164/2013 that the respondent states that he was working on

the EGS from 1974 to 1978 and thereafter worked as a “Watchman” on the Establishment of the petitioners from 1978 till 1990. In 1990, he has been orally terminated by the petitioners and he has approached the Industrial Court by filing a complaint on 17/05/2012 alongwith an application for condonation of delay. The delay was condoned.

4. The petitioners have challenged the judgment of the Industrial Court dated 16/09/2015 by which the complaint filed by the respondent has been partly allowed with costs of Rs.3,000/-. Direction is issued to appoint the respondent on the permanent post of “Watchman” or any other equivalent post and grant him the benefits of permanency from 17/05/2012.

5. The petitioners have relied upon the judgment of this Court in the matter of State of Maharashtra Vs. Bhausaheb Nathu Falke, 2002(1) MLR 74. Contention is that, when the respondent employee has disclosed that he was working on the EGS, the Industrial Court should not have entertained the petitioner. It is further stated that in the said judgment of State of Maharashtra (supra), this Court has concluded that when the work of EGS comes to an end, the employees engaged to do the specified work would not gain a right to claim regularization and they cannot claim to be workmen.

6. The learned Advocate for the respondent has strenuously contented that the respondent had actually worked as a “Watchman” till 1990. The Kalelkar Award, which is applicable to the petitioners, would entitle the respondent to be engaged on Converted Regular Temporary Establishment (CRTE) and 5 years thereafter, he would be entitled for regularization.

7. Though I do not find any material before the Industrial Court to conclude that the post of “Watchman” is vacant and available, the fact remains that the respondent had averred in paragraph No.12 of the complaint that he was terminated from service in 1990. In this backdrop, the Industrial Court should have considered that the cause of action of termination cannot be agitated before the Industrial Court.

8. Section 5 and 7 of the MRTU and PULP Act define the duties and the jurisdiction of the Industrial Court and the Labour Court. Complaints with regard to Item 1 of Schedule IV fall within the jurisdiction of the Labour Court. This aspect has been lost sight of by the Industrial Court which has granted reinstatement in service to the respondent on a permanent post of watchman or any other equivalent post with benefits of permanency from 17/05/2012.

9. In my view, the Industrial Court did not have the jurisdiction to

deal with the issue of reinstatement of the respondent when he had specifically averred in the complaint that he was terminated in 1990.

10. In the light of the above, this petition is partly allowed. The impugned judgment and order of the Industrial Court dated 16/09/2015 is quashed and set aside. The Complaint (ULP) No.164/2013 is held to be untenable in law before the Industrial Court. As such, the respondent shall be at liberty to challenge his termination before the appropriate forum. In the event, the respondent challenges his termination, the time spent by the respondent before the Industrial Court from 17/05/2012 till passing of this order, shall be a ground for condonation of delay.

11. Rule is made partly absolute in the above terms. Needless to state all questions involved are kept open.

(RAVINDRA V. GHUGE, J.)