

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3187 OF 2016

1. The Chief Engineer & Chief
Administrator, Command Area
Development Authority,
(Water Resources Department),
Garkheda, Aurangabad.

2. The Superintending Engineer
and Administrator, Command Area
Development Authority, Circle Office,
(Water Resources Department),
Garkheda, Aurangabad.

..Petitioners

Versus

Arun Vasudeo Gosavi
C/o Trade Union Centre,
Gheshram Building, Parbhani.

..Respondent

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Advocate for Petitioners : Shri Tandale P.R.
Advocate for Respondent : Shri Deshmukh Y.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 28, 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 assails the impugned award dated 19.12.2014 passed by the Labour Court, Aurangabad, by which, Reference (IDA) No.56 of 2005 has been allowed and the respondent has been granted reinstatement with 25% backwages from 5.12.2005 and continuity of service from 16.10.1984.

5. He submits that this petition is based on the following factors:-

(a) Though the respondent was working in between 22.2.1979 till 16.10.1984, when he was terminated, he was offered retrenchment compensation and he declined to accept it.

(b) After termination on 16.10.1984, the respondent slept over the issue and did not raise an industrial dispute for 21 years till 2005.

(c) Reference (IDA) No.56 of 2005 is allowed on 9.12.2014 after 30 years of unemployment of the respondent.

(d) No compensation deserves to be granted to the respondent.

6. Learned Advocate for the respondent employee has strenuously justified the impugned award. Contention is that:-

(a) the respondent was retrenched in a mass retrenchment dated 16.10.1984 after the list was published in a local news

paper.

(b) The respondent was assured that he would be again re-inducted after recruitment process begins.

(c) His application dated 21.8.1991 has not been considered by the employer. After he realized that the employer was not interested in giving him an opportunity in employment, he raised an industrial dispute on 5.12.2005.

(d) The Labour Court noted that the petitioner did not produce relevant documents in support of its case and as such, has rightly allowed the Reference.

(e) The petitioner was required to preserve the records and should have produced the records.

(f) The Labour Court has granted only 25% backwages and that too w.e.f. 5.12.2005 and hence the impugned award is sustainable.

(g) The respondent has attained the age of superannuation and hence, it would be harsh to set aside the impugned award and take away the benefits granted to him by the Labour Court.

7. Having considered the submissions of the learned Advocates, I find that it is undisputed that he has worked between the dates mentioned above, which could be for a period of over five years. No industrial dispute has been raised for 21 years. Since the petitioner

did not adduce proper evidence before the Labour Court, the contention that he was intermittently working and was not entitled to be absorbed on Converted Regular Temporary establishment, was not proved.

8. It cannot be ignored that the Labour Court has over stepped its jurisdiction by granting continuity of service with reinstatement from 16.8.1984, when an industrial dispute was raised after 21 years and the Labour Court delivered the award after 30 years of the disengagement of the respondent.

9. Considering the fact that the respondent has put in a short tenure in employment, which has been followed by a long spell of unemployment of 30 years, I am inclined to rely upon the following judgments of the Honourable Supreme Court:-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],

3. BSNL Vs. Man Singh [(2012) 1 SCC 558] and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].

10. In the light of the above and taking into account that the Honourable Apex Court has held in the above-said judgments that compensation of about Rs.30,000/- per year of service put in, would be appropriate compensation in lieu of reinstatement, continuity and backwages, I am modifying the impugned award.

11. In the result, this petition is partly allowed. The impugned award is modified with the direction to the petitioner to pay compensation of Rs.1,50,000/- (Rs. One Lac Fifty Thousand only/-) to the respondent in lieu of reinstatement, continuity and backwages within a period of twelve weeks from today.

12. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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