

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 736 OF 2008

The Chief Officer,
Ratnagiri Municipal Council,
Ratnagiri, Dist. Ratnagiri.

... Petitioner

v/s

Deepak Yashwant Borkar
R/o. Chickeri, Ratnagiri,
Tal. & Dist. Ratnagiri.

... Respondent

Mr.Rakesh Bhatkar for the petitioner.

Mr.M.S.Topkar for respondent.

CORAM: N.M. JAMDAR, J.

DATED : 7 JANUARY 2016

ORAL JUDGMENT :

By this petition, the Petitioner Council challenges the order passed by the Labour Court, Ratnagiri, dated 26 June 2006 and the order passed by the Industrial Court, Kolhapur, dated 5 September 2007, allowing the Complaint filed by the Respondent and dismissing the revision filed by the Petitioner, respectively.

2. The Respondent filed Complaint (ULP) No.40 of 1995 in the Labour Court, Ratnagiri, under Section 28 read with Item 1(a), (b), (d) and (f) of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The

Respondent contended that he was in the employment of the Petitioner Council since 1 October 1982, on daily wages. His services were brought to an end with effect from 18 January 1988. He had completed 240 days in every year, however, no notice pay or retrenchment compensation was given to him. No charge-sheet was issued and he was terminated from service without enquiry. He contended that the Petitioner did not follow the provisions of Section 25F of the Industrial Disputes Act. The Petitioner contested the claim. It was denied that the Respondent had completed 240 days and the Complaint was liable to be dismissed. The Labour Court accepted the case of the Respondent that he had completed 240 days and his termination was in breach of Section 25F of the Industrial Disputes Act, 1947. As regard the back wages, the Labour Court found that it was not proved by the Respondent that he was not gainfully employed elsewhere. Accordingly, by an order dated 26 June 2006, the Petitioner was directed to reinstate the Respondent on the same post with continuity of service but without back wages. This order was confirmed by the Industrial Court by dismissing the Revision on 5 September 2007.

3. I have heard learned counsel for the parties.

4. The first issue is, whether the Respondent had completed 240 days as required in law. This is essentially a finding of fact. The Respondent had filed an affidavit and had stated on oath that he had completed 240 days. He was cross-examined. The Petitioner did not examine any witness. The Respondent placed on record

documentary evidence. The muster roll of the Respondent was produced on record. The Labour Court, on examination of this material, found that the Respondent was working as a daily rated workman and the muster roll produced at Exh.C-38 shows that he had completed 240 days in the year 1987. Nothing is shown as to how this finding of fact based on ascertaining the muster roll is incorrect. Both the Courts have recorded a categorical finding on assessment of evidence. No notice pay nor retrenchment compensation, has been given at the time of termination. Therefore, the conclusion reached by both the Courts that there was breach of Section 25F, cannot be faulted with. As regard the contention based on Section 2(oo)(bb) of the Industrial Disputes Act, 1947, no such contention was raised in the written statement. The back wages have been denied to the Respondent, which has not been challenged.

5. The question is, whether the Respondent is entitled to reinstatement with continuity of service. The Petitioner is a public body – a municipal council. It is governed by Rules and doctrine of public participation in regular appointments. The Respondent was admittedly working on daily wages. The direction is to reinstate the Respondent. It is laid down by the Apex Court in various decisions that, in the circumstances, such as the present one, reinstatement in service need not follow and suitable compensation can be awarded. For determining the suitable compensation, the period for which an employee has worked and wages drawn by him would be relevant criteria. The Respondent had worked on daily

wages from 1982 till 1987, intermittently. He was drawing wages at the rate of Rs.18.65 per day, at the time of his termination. Learned counsel for the Respondent submitted that, at least Rs.1,00,000/- should be granted as compensation. Considering the wages drawn by the Respondent and that he had last worked in the year 1987, I am of the opinion that Rs.75,000/- would be an appropriate compensation to be awarded.

6. Accordingly, the writ petition is disposed of by setting aside the direction to reinstate the Respondent in service, and substituting the same by grant of Rs.75,000/- as compensation. The compensation should be paid to the Respondent within a period of ten weeks from today.

7. As regard the amount of Rs.8,475/- which is allowed to be withdrawn by the Respondent workman, I am not inclined to pass any separate order regarding the same.

8. In view of disposal of the petition, the office objection regarding the shortfall of Rs.39/- stands waived.

9. Rule is made absolute in above terms. No order as to costs.

(N. M. JAMDAR, J.)

