

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

WRIT PETITION NO.4539 OF 2015

**The Divisional Soil Conservation Officer
Kolhapur Division, Shahupuri, Kolhapur. : Petitioner.
versus
Maruti Sakharam Powar : Respondent.**

**Mr. Sachin H Kankal, AGP, for the Petitioner.
Mr. M S Topkar for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 06th October 2016**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 31/01/2014 passed by the learned Presiding Officer, Labour Court – 1, Kolhapur by which order the Reference (IDA) No.32 of 1995 came to be allowed and resultantly the directions as contend in Clause (2) of the operative part of the said order came to be issued, the English translation of which is reproduced herein under for the sake of ready reference :-

“The First Party shall pay to Second Party his legal dues and give him the benefit of pension by treating his services continuous till the date of his retirement on superannuation.”

2 The Respondent herein was working as a Mazdoor with the Soil Conservation Department, Shahupuri, Kolhaur. The Respondent was appointed in the year 1962 and worked till 1986. It seems that between the year 1986

and 1992, the Respondent had remained absent. The absence was attributed by him on account of the family problems that he had, on account of which he was mentally disturbed. The services of the Respondent ultimately came to be terminated on 28/06/1992 by the order of dismissal passed against him. This resulted in an industrial dispute being raised by the Respondent as the Respondent had claimed his reinstatement with backwages. The said dispute was referred to the Labour Court, Kolhapur for adjudication and bore Reference (IDA) No.32 of 1995. It seems that in the first round the Reference came to be allowed by the Labour Court resulting in the Petitioner herein filing a Writ Petition in this Court. The said Writ Petition came to be allowed. It seems that contemporaneously the Petitioner had filed a Misc. Application in the Labour Court for restoration of the Reference on the ground that the said Reference was decided exparte. The said Misc. Application came to be allowed by the Labour Court by the order dated 09/07/2008 and the Reference came to be restored to file. It is on restoration that the Reference was de-novo adjudicated and has resulted in the impugned order dated 31/01/2014 being passed by the learned Presiding Officer of the Labour Court.

3 Since by the time the Reference was decided the Respondent was superannuated, the Labour Court had issued directions as contained in clause (2) of the operative part of the order. The gist of the reasoning of the Labour Court in allowing the Reference is that the Petitioner had not followed the

procedure before dismissing the Respondent from service and therefore the said termination was in violation of Section 25F and 25G of the Industrial Disputes Act. The learned Presiding Officer of the Labour Court as indicated above has issued directions as contained in the operative part.

4 In my view, having regard to the fact that the dismissal order dated 28/06/1992 was passed without holding an enquiry, the order passed by the Labour Court in issuing the directions as contained in clause (2) of the operative part of the order cannot be faulted with. However it is clarified that the Respondent would not be entitled to any wages. The Respondent would be entitled to gratuity for the period for which he had worked i.e. from 1962 to 1986 but would however be entitled to pension payable to Mazdoor which would be calculated by the Petitioner in terms of the Rules and as per the impugned Award. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]