

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

WRIT PETITION NO. 3353 OF 2002

1. The Chief Executive Officer,
Zilla Parishad, Nasik.
2. Deputy Engineer,
Zilla Parishad (Minor Irrigation),
Peth Sub-Divn. No.1, Dist. Nasik. ... Petitioners

v/s

Shri Dharamraj Nivrutti Kasture,
R/o. Peint, Tal. Peint, Dist. Nasik. ... Respondent

Mr.Ashwinkumar R. Kapadnis for the petitioners.

Ms.Sangeeta Salvi for the respondent.

**CORAM: N.M. JAMDAR, J.
DATED : 7 JANUARY 2016**

ORAL JUDGMENT:

By this petition, the Petitioner - Zilla Parishad, challenges the order passed by the Labour Court, Nasik, dated 23 October 2000, and the order passed by the Industrial Court, Nasik, dated 22 January 2002, allowing the Complaint filed by the Respondent and dismissing the Revision application, respectively.

2 The Respondent filed a Complaint under Section 28 read with Item 1 (a), (b), (d), (e) and (f) of Schedule IV of the M.R.T.U. &

P.U.L.P. Act, 1971. According to the Respondent, he was appointed as a Peon on 1 January 1986 and his services were discontinued with effect from 31 December 1987, by order dated 7 January 1988. According to the Respondent, he had completed 240 days in each year and his services were terminated by the Petitioner in breach of provisions of Section 25F of the Industrial Disputes Act, 1947. The Respondent accordingly sought reinstatement with back wages in the services of the Petitioner Zilla Parishad. The Petitioners filed their say and contended that the entry of the Respondent was not as per Rules and the Respondent had not completed 240 days as required in law. The Labour Court, by an order dated 23 October 2000 directed the Petitioner to reinstate the Respondent in his usual position with continuity of service with effect from 31 December 1987, without back wages. Revision Application (ULP) No.56 of 2001 was filed by the Petitioner in the Industrial Court, Nasik. The Industrial Court dismissed the Revision Application by an order dated 22 January 2002. These orders have been challenged in the present petition.

3 I have heard learned counsel for the parties.

4 At the time of issuance of Rule on 1 July 2002 in this petition, the order passed by the Labour Court was stayed. Therefore, the Respondent is not in service after the order of the interim stay and no back wages have been granted to him and this position has not been challenged by the Respondent.

5 As regard the completion of 240 days as required is concerned, the Respondent has stated that he had completed 240 days. The Respondent was appointed by an order dated 1 January 1986 which shows that the appointment was for a period of twelve months. Thereafter, admittedly, till 7 January 1988, when the order of termination was issued, intermittently, work has been given to the Respondent. Whether the Respondent completed 240 days in the intervening period as required by law, is essentially a question of fact. The Respondent has categorically asserted that he had completed 240 days in each year. He stated so on oath that his service book was maintained and copy was produced by him. The order was passed by the Labour Court on 9 March 2000 directing the Petitioner to produce the pay bills for the relevant period and service book of the Respondent. In spite of the order, the Petitioner neither produced record nor submitted any affidavit. The Respondent had discharged the burden which show that he had completed 240 days. After the burden was shifted in spite of the order of the Court, record was not produced by the Petitioner. The certificate signed by the Deputy Engineer dated 24 August 1983 certifying the employment of the Respondent was produced on record. These documents were proved.

6 Considering this material on record, the Labour Court came to the conclusion that the Respondent had completed requisite 240 days. There is no perversity in this conclusion and it is not possible

to re-appreciate the evidence afresh in writ jurisdiction.

7 That the services of the Respondent have been dispensed with without paying notice pay or retrenchment compensation, is established. That being the position, and that the Respondent had completed requisite 240 days, the action of the Petitioner was in breach of Section 25F of the Industrial Disputes Act. A question arises as to what relief can be granted to the Respondent.

8 The Petitioner is a public body. It is governed by rules. The recruitment in the services of the Petitioner will have to be as per the rules and in consonance with the constitutional mandate. Admittedly, the appointment of the Respondent was not by the Chief Executive Officer, the appointing authority. It was not pursuant to any advertisement. The Respondent was admittedly working as a daily rates workman. Even the impugned order passed by the Labour Court states that the Respondent be reinstated on his usual position. The usual position would be on daily wages. Even otherwise, merely because the Respondent had completed 240 days, there cannot be any direction for reinstatement on permanent basis when the entry itself was in violation of rules and without any public participation. There is no finding of unfair labour practice that the Petitioner had kept the Respondent temporarily for years with an object of depriving him permanency. In fact, the circumstances such as this, the Apex Court in various decisions has indicated that for breach of Section 25F,

reinstatement need not necessarily follow without reference to the nature of work and the period for which the workman had rendered services. The appointment of the Respondent was of the one and half years in which he completed 240 days. He last worked on 31 December 1987. There has been a stay to his reinstatement since the year 2002. In the circumstances, the grant of relief of reinstatement in the services of the Petitioner – Zilla Parishad, is not possible. Learned counsel for the Respondent states that suitable compensation be granted.

9 Considering the overall position and that the Respondent worked on daily wages and the back wages were not granted on the ground that the Respondent was employed elsewhere, in my opinion, the compensation of Rs.50,000/- would meet the ends of justice.

10 Accordingly, the petition is disposed of by quashing and setting aside the orders passed by the Labour Court, Nasik, dated 23 October 2000 and the Industrial Court, Nasik, dated 21 January 2007. The Petitioner will pay compensation of Rs.50,000/- to the Respondent within a period of eight weeks from today.

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

(N. M. JAMDAR, J.)