

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

WRIT PETITION NO. 2759 OF 2002

1. The District Malaria Officer,
Old Civil Hospital, Nasik.
2. The State of Maharashtra,
through the Secretary,
Public Health Department,
Mantralaya, Mumbai – 400 032. ... Petitioners

v/s

Jivraj Amruta Gaikwad,
R/o Karanjali, Post – Devsane,
Taluka – Dindori, Dist. Nasik. ... Respondent

Mr.A.D.Kango, A.G.P. for the petitioners/State.

Mr.Aniket Chaturvedi i/by Mr.Rameshwar N. Gite for the
respondent.

CORAM: N.M. JAMDAR, J.

DATED : 7 JANUARY 2016

ORAL JUDGMENT:

By this petition, the Petitioner State challenges the order passed by the Labour Court, Nasik, dated 31 November 1996 and order dated 12 March 2001 passed by the Industrial Court, Nasik, allowing the Complaint filed by the Respondent, and partly allowing the Revision filed by the Petitioner, respectively.

2. The Respondent worked as a Malaria Havaladar with the Petitioner State from the year 1973 to 1986. His services were terminated on 23 October 1996. Both the Courts, after assessment of evidence, came to the conclusion that the Respondent had proved that he was kept temporary for a period of almost twelve years. The contention of the Petitioner State that the work was of seasonal nature, was not accepted and both the Courts rendered a categorical finding that the work was of perennial nature.

3. Both the Courts recorded a finding that the unfair labour practice was committed by Petitioner State in keeping the Respondent on temporary basis from 1973 to 1986 and thereafter terminated his services without following due process of law. Nothing is shown as to why this finding of fact be disturbed.

4. At the time of admission of this petition on 2 May 2002, the interim relief was restricted to only back wages and there was no stay to the reinstatement and the Petitioner was directed that, on reinstatement of the Respondent to pay him wages on the same basis as similarly placed employees. An affidavit has been filed by the District Malaria Officer, Nasik, on 25 February 2008, in which it is stated that pursuant to the interim order passed dated 2 May 2002, the Respondent was reinstated on 31 August 2002 and he retired on superannuation on 31 July 2007. It is stated that, in view of this position, the Respondent was not entitled to the pensionary benefits as he had not completed a period of five years.

5. This stand taken is entirely incorrect. The Court had directed the Petitioner State to reinstate the Respondent by order dated 2 May 2002, which direction was to be complied with latest by within a period of 60 days. Even assuming 60 days' period to be considered, that ended on 2 July 2002 and, therefore, the Respondent on the date of his superannuation had completed five years.

6. Apart from this position, as stated earlier, nothing is shown as to why the finding of fact regarding keeping the Respondent on temporary basis for a period from 1973 to 1986 which resulted in an unfair labour practice, and thereafter terminating his services in the year 1986, was without following due procedure of law, is to be disturbed.

7. Considering the above position, there is no merit in this petition and the petition is accordingly rejected.

(N. M. JAMDAR, J.)