

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

WRIT PETITION NO.7152 OF 2013

**The State of Maharashtra,
Through the Deputy Director,
Social Forestry Division, Sangli,
Near MIDC, Kupwad, Dist. Sangli.**

..Petitioner

Versus

**Shri. Tukaram Vishnu Atam
R/o-Post-Girajevade,
Tal. Shirala, Dist. Sangli.**

..Respondent

Mrs. V. S. Nimbalkar, AGP for the Petitioner.

**CORAM : R. M. SAVANT, J.
DATE : 4th OCTOBER, 2016**

PC.

1 By the above Writ Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to the Award passed by the Learned Presiding Officer, Labour Court, Sangli, by which the Reference in question being Reference (IDA) No.14 of 2007 came to be allowed and resultantly, the Petitioner was directed to reinstate the Respondent herein to his original post with continuity of service with effect from 27.09.2006 and with 20% backwages.

2 The Respondent herein was employed with the Petitioner

which is the Social Forestry Department of the Government of Maharashtra, Sangli Division. The appointment of the Respondent was initially in the year 2000 and the Respondent continued intermittently till 27.09.2006 when his services were allegedly orally terminated. On the termination of his services, the Respondent called upon the Petitioner vide his letter dated 30.10.2006 and requested that he be taken back on work. However on the refusal of the Petitioner to take him back on work, the same gave rise to a dispute as regards the termination of the services of the Respondent which ultimately came to be referred to the Labour Court, Sangli and bore Reference (IDA) No.14 of 2007. The Respondent filed his statement of claim and the relief sought was of reinstatement with backwages.

3 The Petitioner filed its written statement and the stand taken was that the Respondent was a daily wager and had worked intermittently during the said period and that he was employed in the Employment Guarantee Scheme of the Government and therefore the Respondent could not seek the relief he had sought vide the said statement of claim. In view of the stand taken by the Petitioner, the Respondent vide his application Exh.U-4 had called upon the Petitioner to produce the Pay Registers and Muster Rolls in respect of Watchmans/Labourers who were working with the Petitioner between the

period 01.01.2000 to 31.12.2006. It seems that pursuant to the said requisition, the said documents were not produced, but only a table showing the number of days put in by the Respondent between 16.07.2004 to 30.06.2009 was produced. In so far as the Petitioner is concerned, it has come in the evidence of its witness Shri. D. G. Shete that the Muster Rolls and the Pay Registers in respect of the persons working in the Employment Guarantee Scheme were maintained by the Petitioner.

4 Hence having regard to the fact that the Petitioner had not produced the Muster Rolls and Pay Registers relating to the Employment Guarantee Scheme as also having regard to the fact that it was the evidence of the Petitioner's witness that such Muster Rolls and Pay Registers are maintained, the Learned Presiding Officer deemed it appropriate to draw an adverse inference against the Petitioner. The Learned Presiding Officer concluded that in the absence of the said record being produced which is in the custody of the Petitioner, it would have to be presumed that the said material was not produced as the contents thereof might be adverse to the Petitioner. The Learned Presiding Officer therefore concluded that the Respondent had worked for more than 240 days in a calendar year and therefore the termination of his services without following the statutory procedure was illegal. The

Learned Presiding Officer therefore held that the Respondent would be entitled to reinstatement however considering the fact that the Department in question was the Social Forestry Department, the Learned Presiding Officer deemed it appropriate to restrict the backwages to only 20%. As indicated above, the Learned Presiding Officer by the impugned order dated 31.03.2012 has partly allowed the said Reference.

5 The Learned AGP Mrs. V. S. Nimbalkar appearing for the Petitioner sought to contend that the Petitioner has now the material in its possession and therefore may be given an opportunity to produce the said material by remanding the matter back to the Labour Court for a de-novo consideration.

6 In my view, it is not possible to accept the said contention. The Petitioner cannot produce such material for the first time in this Court, and at this length of time. In the absence of the material produced by the Petitioner in the Labour Court and especially having regard to the evidence of the Petitioner's witness Shri. D. G. Shete that such Muster Rolls and Pay Registers are maintained in respect of the persons working in the Employment Guarantee Scheme, the adverse inference drawn by the Learned Presiding Officer of the Labour Court cannot be found fault with. In the result, there is no merit in the challenge raised in the above

Writ Petition. The Writ Petition is accordingly dismissed.

7 At this stage, the Learned AGP prays for stay of the instant order. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]