

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3504 OF 2015

[The Sub-Divisional Engineer, P.W.D., Sub-Division, Washim and others .vs. Shri Namdeo Raghoji
Nehul and another]

AND

WRIT PETITION NO.3505 OF 2015

[The Sub-Divisional Engineer, P.W.D., Sub-Division, Washim and others .vs. Natha Piraji Ingole and
one]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. M. Deshmukh, A.G.P. for the petitioners,
Mr. S.S. Shinde, Advocate for the respondent no.1.

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CORAM : PRASANNA B. VARALE, J.

DATED : JANUARY 15, 2016.

Heard the learned counsel for the parties.

The petitioners, in both the petitions, challenge the
order passed by the Presiding Officer, Labour Court at Akola,
dated 21.7.2014 in Reference (IDA) No.20/2010 and 21/2010.

The respondent no.1, in both the petitions,
approached the Conciliation Officer and submitted that he was
engaged as a Majdoor by the petitioners-department in the year
1978 and he continued to work with the petitioners-department
till 31.3.1987. The services of the respondent no.1 were
terminated from 31.3.1987 without assigning any reason. It was
submitted by the respondent no.1 that neither notice was issued
to the respondent no.1 nor salary of one month was paid to him.
He further submitted that the petitioners-department had
prepared a list of the majdoors and the name of the respondent

no.1 was appearing in the said list along with the other majdoors. It was also submitted that other majdoors, who were engaged by the petitioners-department and more particularly those who were juniors to the respondent no.1, retained in the engagement, whereas the services of the respondent no.1 were terminated. The respondent no.1 had approached the Conciliation Officer on 5.1.2010. The Conciliation Officer referred the matter to the learned Labour Court, Akola in reference (IDA) Nos.20 and 21 of 2010.

The claim was opposed by the petitioners-department denying the contentions of the respondent no.1. It was also submitted by the petitioners-department that the claim of the respondent no.1 was wholly time barred and there was absolutely no reason for entertaining such a time barred claim, leaving aside any cogent reason. It was also submitted by the petitioners-department that as the respondent no.1 was never appointed by complying the provisions of appointment, there was no question of his name appearing in the list prepared by the petitioners-department. It was also submitted by the petitioners-department that the respondent no.1 could not have taken the benefits of some government resolution to support his claim. The petitioners-department led evidence in the form of their witnesses i.e. Assistant Engineer, Public Works Department, Washim and the learned Presiding Officer. On considering the rival claim of the parties as well as on appreciating the evidence, the reference is partly allowed. The learned Presiding Officer granted with continuity of service and reinstatement from the date of the order, but rejected the claim of back-wages.

The learned Assistant Government Pleader appearing on behalf of the petitioners-department vehemently submitted

that the learned Presiding Officer ought not to have entertained the time barred claim. She submitted that it was the claim of the respondent no.1 that his services were terminated sometime in the year 1987, whereas the respondent no.1 approached to the Conciliation Officer in the year 2010. She submits that there was absolutely no convincing reason for entertaining the belated claim. Learned A.G.P. further submits that as the respondent no.1 was a daily rated majdoor, there was no question of issuance of any appointment order to the respondent no.1. She further submits that the respondent no.1 was doing some labour work such as excavation of stones, spreading tar on the road and collecting the taxes from vehicles running on the road. Learned A.G.P. further submits that as per the Public Works Department Manual, record is destroyed at periodical intervals. This being the practice followed in view of the manual. The record was not produced before the learned court below and on that count, no negative inference ought to have been drawn against the petitioners. Learned AGP thus on these submissions prays for allowing the writ petition by quashing and setting aside the order impugned in the present petition. Learned AGP, in support of her submissions, placed reliance on the judgment of this court in the matter of Executive Engineer, Public Works Division, Wardha .vs. Mahadeo Govindrao Narayane, reported in 2014 Lawsuit (Bom) 1306.

Mr. Shinde, the learned counsel appearing on behalf of the respondent no.1, submits that though there was a delay in preferring the claim, sufficient reason was shown by the respondent no.1 for such delay. He further submits that the petitioners being department were expected to maintain its own records. If the petitioners-department failed to establish their case, no fault can be found either with the order passed by the

learned court below or with the respondent no.1. Mr. Shinde further submits that the evidence tendered by petitioners-department was full of contradictions. Thus, the learned counsel for the respondent no.1 prays for dismissal of the petition.

I heard the learned counsel appearing on behalf of both the parties and with the assistance of the learned counsel, I have gone through the material placed on record.

It was the submission of learned A.G.P. that there was no reason assigned by the respondent no.1 for a belated claim lodged before the Conciliation Officer or the court below. The perusal of the material shows that the respondent no.1 has taken a specific ground for the delay and that was, as the Union was prosecuting the grievance of the respondent no.1 and the similarly situated employees and the respondent no.1 being an illiterate person was under a bona fide impression that the Secretary of the Union was looking after his matter along with other employees. It was also submitted that when the respondent no.1 approached the department, so it was told by the department that the matter was pending before the appropriate forum and the department was received some orders of the court and as per the orders of the court, the respondent no.1 will be accordingly reinstated. It is submitted that as the respondent no.1 was under an impression that as the petitioners-department has assured him, he was waiting for the necessary decision by the department. When it was found by the respondent no.1 that the department had illegally terminated the services and in spite of the fact that similarly situated employees and some of the junior employees were reinstated and were granted benefits, the respondent no.1 approached the authority. Thus, I am unable to accept the submission of the learned A.G.P.

that there was no reason assigned by the respondent no.1 for his time barred claim. Insofar as the merit of the matter is concerned, the perusal of the evidence tendered by the petitioners-department, shows that an employee namely Assistant Engineer, Public Works Department, was the witness before the learned Labour Court, Akola on behalf of the petitioners-department. The perusal of his evidence shows that this witness has taken somersault on more than one occasion in his evidence. This witness admits that in the year 1987 the department removed 56 persons in view of zero budget aspect. He then further admits that the list includes the name of the employees. He further admits that those employees whose names find place in the list Exh.22/1 were reinstated. He further admits that one 'Chanekar', who was engaged along with those other employees, is still in the service of the department and proposal of his continuity in the service is received by the department. This witness then states that the court directed the petitioners-department to produce the material namely, muster register from year 1987, cash-book and seniority list. He states that the muster register was not produced in the court as the same was destroyed after five years. He then states that no vouchers are available and though he was carrying cash-books with him, he has not presented the same on record. He further submits that no seniority list of the majdoors was available with the petitioners-department. He then states that fire took place in the office and in the fire, the record was destroyed. He admits that a report was lodged with the Police Station and then states that the copy of such report is not placed on record. He also admits that no report of the Fire Prevention Department is placed on record. It is interesting to note that, at one point of time, the witness states that the record is destroyed after five years as per the manual and in another breath, he states that the record was

destroyed in the fire took place in the office. It is also interesting to note that in one breath this witness states that old record is destroyed as per the Public Works Department Manual and in the next breath, he states that, if some matter is pending in the court, the record is not destroyed by the department in such case and he further goes on saying that in the present proceeding, the record was subjected to a fire took place in the department. Now the contrary stand taken by this witness in respect of record, clearly shows that the petitioners-department failed to substantiate their opposition of claim to the respondent no.1. The learned Labour Court at Akola, on consideration of the material placed on record as well as the evidence, found that the witness on behalf of the petitioners-department, also submitted that the work was still available with the petitioners-department. The witness was giving contrary version before the court and the respondent no.1, successfully established his claim that he was working with the petitioners-department from year 1978 to year 31.3.1987 continuously and the services of the respondent no.1 were terminated without following the due procedure. As such the respondent no.1 was entitled for reinstatement and the continuity in service. The learned Presiding Officer of the Labour Court also found that in view of the judgment of this court in the matter of Executive Engineer, Public Works Department .vs. Namdeo Govindrao Nandurkar, the respondent no.1, in view of the judgment, the court dealing with the references on consideration of material hold the relief either by refusing back-wages or denied it completely. The learned Presiding Officer, Labour Court, on the material placed before him hold that the respondent no.1 was not entitled for back-wages and accordingly passed the judgment and order dated 21.7.2014.

I find that no error is committed by the learned

Labour Court. There is no ground to show any indulgence in the order impugned in the present petitions. Though the learned A.G.P. placed reliance on the judgment of this court in the matter of Executive Engineer, Public Works Division, Wardha .vs. Mahadeo Govindrao Narayane (supra), in my opinion, considering the facts of the present matters, the judgment relied by the learned Assistant Government Pleader is of no help to the petitioners-department.

Both the writ petitions are accordingly dismissed.

JUDGE