

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.562 OF 1998
WITH
CIVIL APPLICATION NO.3926 OF 1998

M/s NRB Bearings Ltd.,
Additional Industrial Area,
Jalna, through the Vice President -- PETITIONER

VERSUS

Ganpat Bandu Lokhande,
Age-Major, Occu-Service,
A/p Baranjala, Tq.Bokardhan,
Dist.Jalna -- RESPONDENT

Mr.T.K.Prabhakaran, Advocate for the petitioner.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/02/2017

ORAL JUDGMENT :

1. The petitioner/Management is aggrieved by the award dated 11/12/1997 by which Ref.(IDA) No.3/1988 was allowed and the respondent was granted reinstatement with continuity and full back wages w.e.f. 18/06/1987.

2. By order dated 13/08/1998, this petition was admitted, the impugned award was stayed and Civil Application No.3926/1998 filed by the respondent/workman seeking Section 17-B benefits, was listed

for hearing on 17/09/1998.

3. The said civil application, seeking benefits under Section 17-B of the I.D.Act, though was posted for hearing, was not proceeded with.

4. I have considered the submissions of the learned Advocates for the respective sides and have gone through the record and proceedings available.

5. The respondent, by Ref.(IDA) No.3/1988, had claimed to have been appointed as a 'trainee' on 27/07/1986. He was disengaged on 17/06/1987 after working for about 8 months and 17 days. By the reference proceedings, he claimed violation of Section 25-F of the I.D.Act and prayed for reinstatement with continuity and full back wages. He had also averred that Section 25-G of the I.D.Act has also been violated as junior employees were retained in service.

6. The record and proceedings received from the Labour Court and the appointment order dated 01/10/1986 clearly indicates that the respondent was engaged as a 'trainee'. His monthly stipend was fixed at Rs.430/- p.m. He was entitled for reimbursement of Rs.1/-

per day as transport allowance and an equal amount towards tiffin allowance based on his actual presence. In the cross-examination recorded before the Labour Court, the respondent has admitted that he was absent from duty since 18/06/1987. In this backdrop, it was averred that he was orally disengaged from 18/06/1987.

7. It is trite law that a trainee, who has been so specifically appointed and has accepted the appointment order, would have no right to seek regular employment for the reason that the appointment of a 'trainee' has to be distinguished from an appointment of a 'probationer'. Standing Order 3(f) provides for appointing an 'apprentice' as a learner and who is to undergo the period of training. Though the respondent was not specifically appointed as an apprentice, the fact that he was engaged for the first time and was informed that he would be working as a trainee and undergo a training programme, would not equate his case with the case of a probationer who is a workman appointed against a vacant post and is being tested for his suitability for a permanent appointment.

8. Standing Order 4C which is a deeming provision for granting permanency to an employee, cannot be imported in a case of a trainee. The Labour Court has concluded that since the respondent

had worked as a trainee for 240 days, he would be deemed to be permanent in employment. So also, he is out of employment for about 30 years after he worked for 8 months.

9. In the light of the above, if it is established that the trainee has worked for years together under the garb of being a trainee, it would be open to a Court to lift the corporate veil and scrutinize whether such an employee was made to work as a regular workman for years and yet has been nomenclatured as a trainee only to camouflage his actual employment.

10. In the absence of such a situation, the impugned award is perverse and unsustainable and stands quashed and set aside. The reference proceedings, therefore, stand answered in the negative. Writ petition, therefore, stands allowed.

11. Section 17-B of the I.D.Act entitles a workman who is armed with an award of reinstatement in service, to claim last drawn wages during the pendency of the proceedings challenging such award before this Court or the Hon'ble Apex Court. For the said purpose, an application is required to be filed to indicate that the employee is not in gainful employment and has no source of income. Such an

application has to be supported with an affidavit. Benefits u/s 17-B are to be extended from the date of the application if the Court is convinced that the employee was not in gainful employment and had no source of income.

12. The petitioner in response to the said application has filed an affidavit dated 07/10/2002 wherein it is specifically stated that the Personal Officer of the company visited the agricultural land of the respondent alongwith another Officer, on two occasions. On making enquiries, it was revealed that the respondent owns 8 acres of agricultural land and cultivates cotton in the said land. It is specifically stated that his 7/12 extract could not be obtained as the same is in the custody of the land owner. A counter affidavit has not been filed to the said application to refute the contention.

13. Normally, the benefit of Section 17-B will have to be extended from the date of the application. The record of this Court reveals that though the application was posted for hearing, no such hearing has occurred. Considering the above and to balance the equities, I find that lump sum quantification of Section 17-B benefits to the extent of Rs.50,000/- would meet the ends of justice.

14. The civil application is partly allowed by directing the petitioner to pay an amount of Rs.50,000/- as quantified payment u/s 17-B to the respondent within a period of 12 (twelve) weeks from today.

15. Record and proceedings from the Labour Court, be returned forthwith.

(RAVINDRA V. GHUGE, J.)