

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3056 OF 1995

Divisional Joint Director of
Agricultural, Latur

-- PETITIONER

VERSUS

1. Dharmaraj Yeshwant Lakal,
Age-35 years, Occu-Service,
R/o Ter, Tq. and Dist.Osmanabad,

2. Jaidev Sambhaji Lakal,
Age-30 years, Occu-Service,
R/o Ter, Tq. and Dist.Osmanabad,

3. Pandurang Dagdu Pawar,
Age-30 years, Occu-Service,
R/o Ter, Tq. and Dist.Osmanabad

-- RESPONDENTS

Mr.N.T.Bhagat, AGP for the petitioner.

Mr.V.D.Gunale, Advocate for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/02/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment dated 14/09/1994 by which application (IDA) No.186/1993 filed by the respondents/workmen seeking recovery of money due from an employer u/s 33-C(2) has been allowed.

2. While admitting this petition on 03/07/1995, the impugned

judgment was stayed on the condition that the respondents would be given work as it could be available within the periphery of 5 kms. The order for allotting work is dated 19/07/1996 and the further order dated 03/08/1996 directs the petitioner to appoint the respondents on daily wages at the site where the work is available within 5 kms from the residence of the respondents.

3. I have considered the submissions of the learned AGP on behalf of the petitioner and Mr.Gunale who has strenuously supported the impugned judgment. With their assistance, I have gone through the petition paper book and the record available.

4. Section 33-C(2) of the I.D.Act reads as under :-

“Where any workman is entitled to received from the employer any money or any benefit which is capable of being computed in terms of mney and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further

period as he may think fit.]”

5. It is trite law that the application u/s 33-C(2) is to be preferred by an employee who seeks recovery of unpaid dues from an employer. It presupposes a preexisting right in such a claimant. Contentious issues as to whether a right would exist in an employee or not, are beyond the jurisdiction of the Labour Court u/s 33-C(2). The said provision is not to be pressed into service for seeking an adjudication as to whether any right exists and as to whether an employee could claim a right to particular benefits.

6. In the instant case, the respondents/employees preferred their application for seeking difference in wages by comparing themselves with the regular employees who were on the regular establishment of the petitioner. Consequentially, the contentious issues that were raised before the Labour Court was as to whether these respondents/claimants could be treated as the employees on the regular establishment of the petitioner and as to whether they would then be entitled to the scales of monthly wages as are payable to the regular employees.

7. To the extent of the claim of the respondents, the petitioner

tendered a statistical data indicating that these respondents were working on daily wages and the rates at which they were paid their daily wages, were in tune with the decision taken by the State Government. These respondents were working in between 1991 to 1993. One of them has worked for about 18 months.

8. I find from the impugned judgment that the Labour Court has dealt with the issue as if it can grant regular status or permanent status to the claimants, being oblivious of the fact that Section 33-C(2) does not vest this jurisdiction in the Labour Court. It went on to decide the nature of work being done by the daily wagers, concluded that they were in fact watchmen and not daily wagers and then proceeded to conclude that they were entitled to such payments as are to be paid to the regular watchmen. In my view, the Labour Court has exercised jurisdiction not vested in it by law.

9. As a result, this petition is allowed and the impugned judgment dated 14/09/1994 is quashed and set aside. Application (IDA) No.186/1993 stands rejected. Rule is made absolute in the above terms.

(RAVINDR V. GHUGE, J.)