

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5247 OF 1997

Shri Asaram N. Patil.

Since deceased through his L.Rs.:-

1 Mrs.Anjanabai Asaram Patil,
Age : 32 years, Indian Inhabitant,
At post Saundhane,
District and Taluke Dhule.

2 Master Arun Asaram Patil,
Age : 14 years, through his
next friend and guardian,
Mrs.Anjanabai Asaram Patil,
Age : 32 years, Indian Inhabitant,
At post Saundhane,
District and Taluke Dhule.

3 Master Ankush Asaram Patil,
Age : 12 years, through his
next friend and guardian,
Mrs.Anjanabai Asaram Patil,
Age : 32 years, Indian Inhabitant,
At post Saundhane,
District and Taluke Dhule.

....PETITIONERS

-VERSUS-

The Zilla Parishad,
Dhule.
Through its Chief Executive Officer.

...RESPONDENT

...
Shri Ashish B. Rajkar h/f Shri A.M.Gholap, Advocate for the Petitioners.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd February, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the judgment of the Industrial Court dated 30.09.1993 by which Revision (ULP) NO.110/1992 filed by the Respondent/ Zilla Parishad has been allowed and the judgment of the Labour Court dated 27.09.1991 allowing Complaint (ULP) No.186/1990 filed by the Petitioner, has been dismissed.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned judgment of the Industrial Court. He submits that the Industrial Court's jurisdiction under its revisional powers under Section 44 of the MRTU & PULP Act, 1971 is extremely limited. It cannot reappreciate the entire evidence threadbare. Merely because a second view is possible, the Industrial Court cannot set aside the judgment of the Labour Court. The Labour Court had arrived at the findings on facts which cannot be upset under the revisional powers of the Industrial Court.

3 He further submits that the Labour Court considered the oral and documentary evidence and concluded that the Petitioner was working from 28.04.1984 till 14.03.1990. He was engaged as a Mustering Assistant from time to time to perform the work considering the Employment

Guarantee Scheme (EGS) being implemented in the State of Maharashtra. His disengagement was rightly set aside by the Labour Court as the Respondent did not comply with Section 25-F of the Industrial Disputes Act, 1947 prior to terminating the service of the Petitioner. He, therefore, prays that this petition be allowed by quashing the impugned judgment of the Industrial Court.

4 With the assistance of the learned Advocate, I have gone through the petition paper book. The original Complainant/ Petitioner herein passed away on 22.08.1996 during the pendency of this petition, which was filed on 22.12.1995. The legal heirs have been brought on record.

5 I find that there was no evidence before the Labour Court with regard to the continuous service of the deceased Petitioner. His appointment order and his termination order dated 14.03.1990 are on record at Exhibits A and B, respectively. The appointment order indicates that he was appointed only on temporary basis. Since the Respondent/ Zilla Parishad did not produce the documents before the Labour Court, it concluded that it has no option but to rely upon the testimony of the Complainant to conclude that he worked from 28.04.1984 till 14.03.1990.

6 It is trite law that the burden of proving continuous employment lies on the Claimant. Such burden is not to be discharged by making an oral statement in the absence of any documents. The judgment of the Labour Court does not indicate that the Petitioner had resorted to making an application under Order XI Rule 12 or Order XI Rule 14 or Order XI Rule 15 of the Code of Civil Procedure for seeking discovery or production or inspection of the documents. Yet, the Labour Court has concluded that as the affidavit of the Petitioner has gone unchallenged, all that is said in the affidavit has to be accepted. In my view, this is not the way of proving 240 days in continuous employment.

7 It is also not disputed that the Petitioner was working as Mustering Assistant on EGS. He was not in employment from 14.03.1990 and subsequently, he has passed away on 22.08.1996.

8 The matter of Mustering Assistants has reached the Honourable Supreme Court and the scheme was presented before the Honourable Supreme Court. Mustering Assistants working on EGS were excluded. The scheme was accepted by the Honourable Supreme Court. The State Government issued the Government Resolution dated 01.12.1995. By the said Government Resolution, the State Government commenced the procedure for considering eligible Mustering Assistants for

regularization. The condition was that they should be in employment as on 31.05.1993. Their services were regularized in the Government or the Zilla Parishad employment based on the said Government Resolution. This Court has delivered its judgment in the matter of *Chief Executive Officer, Zilla Parishad, Ahmednagar vs. Daulat Narsingrao Deshmukh and others*, **2001 (2) Mh.L.J. 543**.

9 Considering the legal position as above and the fact that the deceased Petitioner was not in employment after March, 1990, he could not have been considered favourably as per the Government Resolution dated 01.12.1995. The Industrial Court, while considering all the above factors, concluded that the judgment of the Labour Court was perverse and erroneous. I do not find that the Industrial Court has committed any error in coming to this conclusion.

10 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.