

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1419 OF 2002

1. The State of Maharashtra,
Through Government Pleader,
High Court, Aurangabad.

2. The Divisional Soil Conservation
Officer, Divisional Soil Conservation
Office, Damadi Mahal, Aurangabad
Now merged in to Divisional
Agriculture Office, Aurangabad.

3. The Sub-Divisional Agriculture
Officer, Sillod, Tq. Sillod,
District Aurangabad.

4. Taluka Agriculture Officer,
Sillod, Tq. Sillod, Dist. Aurangabad.

..Petitioners

Versus

Gangaram Mahadu Sananse,
Died, through L.Rs.

1. Smt. Sulochanabai Gangaram
Sananse, age 65 years,
R/o Undangaon, Tq. Sillod,
District Aurangabad.

2. Archana Yashwant Navale
(Daughter of Gangaram),
Age 26 years,
R/o Undangaon, Tq. Sillod,
District Aurangabad.

3. Kalpana Gangaram Sananse,
Age 24 years,
R/o Undangaon, Tq. Sillod,
District Aurangabad.

..Respondents

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AGP for Petitioners : Shri A.R.Borulkar
Advocate for Respondent : Shri N.J.Pahune Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 12, 2017

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ORAL JUDGMENT :-

1. The petitioners are aggrieved by the judgment dated 31.2.2002, delivered by the Labour Court, Aurangabad by which Application (IDA) No. 58 of 1990 filed by the respondent under Section 33-C(2) was allowed and the petitioner was directed to pay an amount of Rs.19214/- along with simple interest at the rate of 12% per annum.
2. This Court has admitted this petition by order dated 10.2.2003 and directed the petitioners to deposit the entire amount including the interest within four weeks. With this condition of deposit, interim relief in terms of prayer clause (c) was granted.
3. I have heard the submissions of the learned AGP on behalf of the petitioners and the learned counsel on behalf of the respondent.
4. There is no dispute that the application under Section 33-C(2) was filed by the respondent in the light of the directions of the Industrial Court dated 5.10.1999 in Complaint (ULP) No.270 of 1985,

which read as under:-

- "1. Whenever the work is available the respondent shall provide the work to the complainant pending the decision of the complaint.
2. Whenever the complainant reports for duty and renders services he shall be paid the wages as prescribed under the Government Resolution.
3. The complainant cannot claim that the work should be provided to him only at a particular place.
4. The complainant cannot claim that he should be provided with the work of only supervisory nature and he should not be provided the work involving physical labour."
5. The respondent had approached the Labour Court on the ground that after the above order was passed by the Industrial Court he has made several applications for allotment of work. Work was available. The petitioners did not deliberately allot him the work. Therefore, this deliberate denial should be presumed to mean that the respondent was on duty during the said period and hence it should be presumed that he was entitled for the said wages as are claimed in the said application.
6. I find that the Labour Court after considering the averments of

the respondent has concluded in paragraph 6 that as the petitioners did not prove that no work was available, as they did not prove that work could not be allotted to the respondent and as they could not prove that the respondent / workman was not entitled for wages, it will have to be presumed that the respondent was entitled for the wages as he had demanded work.

7. I find that the Labour Court has misdirected itself in so far as it's jurisdiction under Section 33-C(2) of the ID Act is concerned. Section 33-C(2) reads as under:-

"Section 33C - Recovery of money due from an employer.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money 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"

8. It has also come on record that the respondent was working on

EGS. Notwithstanding this aspect, it is not within the jurisdiction of the Labour Court to resort to a roving enquiry by finding out whether work can be said to be available, whether work could have been made available, whether such work could have been allotted to the workman and on failure of the establishment in doing so, whether it could be presumed that the respondent was deemed to be on duty and therefore, presumed to be entitled for wages.

9. Considering the above, this petition is allowed. The impugned judgment of the Labour Court dated 31.1.2002 is quashed and set aside and Application (IDA) No.58 of 1990 stands rejected. Rule is made absolute accordingly.

10. Learned counsel for the respondent submits that after the amount was deposited by the petitioners, the respondent may have withdrawn the same. So also, the respondent has now passed away.

11. In the light of the above, it needs to be noted that if the amount is not deposited by the petitioners or if it is deposited and not withdrawn by the respondent, the Registry shall permit the petitioners to withdraw the said amount along with the accrued interest, having succeeded in this petition. However, if the amount is deposited and the respondent has already withdrawn the said amount before he passed away, the petitioners would be precluded

from recovering the said amount from the legal heirs of the deceased respondent.

(RAVINDRA V. GHUGE, J.)

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