

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

WRIT PETITION NO. 2329 OF 1998

Sub Divisional Officer,
Deolali Pravara Sub Division,
at Deolali Pravara, Tq.Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

Shri Gorakhnath Rangnath Khilari,
at Sarode Vasti, Kangar Road,
Tq.Rahuri, District Ahmednagar.

...RESPONDENT

...

AGP for Petitioner : Ms.S.S.Raut.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the award dated 30.01.1996 by which Reference (IDA) No.14/1992 has been partly allowed and the Respondent is granted reinstatement without back wages and without continuity.

2 Despite service of the court notice, the Respondent has not chosen to enter an appearance either through an Advocate or in person.

3 While admitting this petition, interim relief was not granted. The learned AGP is not able to make a statement as to whether, the Respondent is in employment since the Petitioner/ Department has not submitted any information despite the correspondence from the learned AGP.

4 The learned AGP has strenuously canvassed that the Respondent was working under the Employment Guarantee Scheme (EGS). There was no employer-employee relationship with the Respondent. Considering these aspects, neither the reference was tenable before the Labour Court, nor is the Kalelkar Award applicable.

5 In the light of the submissions of the learned AGP, I have gone through the petition paper book.

6 The Written Statement at Exhibit C-1 was filed by the Petitioner before the Labour Court. The Respondent had contended that he was working with the Petitioner from 22.09.1983 till 30.08.1985. It was canvassed in the Written Statement that the Respondent was engaged on EGS. The work of Mustering Assistant is available only under the EGS. As the Petitioner had not produced any documentary evidence to indicate

that the Respondent was working on EGS or that his name was entered in the EGS register and that the EGS identity card was issued to him, the Labour Court held that the Respondent was not working on EGS.

7 It also appears from the record that the Respondent was issued with the transfer order signed by the Executive Engineer transferring him from Wadala Sub Division, Shrirampur to Deolali Pravara Sub Division on 06.09.1983. Exhibit C-4 was the chart prepared by the Petitioner placed before the Labour Court indicating that he was working continuously from September, 1983 till August, 1985.

8 Considering the above, I do not find any reason to cause an interference in the conclusions of the Labour Court to the extent of the Respondent having completed two continuous years in employment. It cannot be ignored that though the Respondent was disengaged after 30.08.1985, he slept over the matter and raised an industrial dispute in 1992 after about seven years. The impugned award is dated 30.01.1996, which is delivered after 11 years of the Respondent's disengagement.

9 In the following four judgments delivered by the Honourable Supreme Court, it is held that if an employee has worked for a short duration and his disengagement is followed by a long spell of

unemployment, granting reinstatement with continuity would be impracticable and the compensation of about Rs.30,000/- per year of service put in by the employee would be commensurate:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, **[2013 LLR 1009]**;*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, **[(2013) 5 SCC 136]**;*
- (c) *BSNL Vs. Man Singh, **[(2012) 1 SCC 558]**; and*
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, **[(2009) 15 SCC 327]**.*

10 In the light of the above and in the event, the Respondent has not been reinstated in service pursuant to the impugned award, this Writ Petition is partly allowed. The impugned award dated 30.01.1996 is modified by directing the Petitioner to pay compensation of Rs.60,000/- (Rupees Sixty Thousand) to the Respondent within a period of TWELVE WEEKS from today in lieu of reinstatement and further benefits.

11 It be noted that in the event the Respondent has been reinstated in service, the direction to pay compensation would stand recalled, the direction granting continuity by the Labour Court would

stand sustained and the Respondent would then be entitled for such service benefits to which he would be legally entitled to pursuant to his reinstatement.

12 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)