

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

WRIT PETITION NO.2424 OF 1998

1 The State of Maharashtra.
Through Phalotpadan Adhikari,
Taluka Phalrop Vatika, Pachora,
District Jalgaon.

2 Phalotapadan Up-Sanchalak,
Jalgaon Vibhag, Jalgaon.

...PETITIONERS

-VERSUS-

1 Jalgaon Jilha Krishi Majur Union.
Trade Union Centre, Sathe Building,
Amalner, District Jalgaon.

2 The Ld.Judge, Labour Court,
Jalgaon.

...RESPONDENTS

...
Ms.S.S.Raut, AGP, for the Petitioners.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2017

Oral Judgment :

1 Respondent No.2 is the Labour Court. Being a formal party,
Respondent No.2 stands deleted from the proceedings.

2 The Petitioner is aggrieved by the judgment of the Labour Court dated 19.12.1996 delivered in Complaint (ULP) No.99/1989 by which four employees represented by the Respondent Union have been granted reinstatement with continuity and 75% back wages from the date of their termination.

3 After admitting this petition, this Court granted interim relief in terms of prayer clause (E) thereby, staying the judgment of the Labour Court.

4 Normally, this petition would not have been entertained as the Petitioner has directly approached this Court against the judgment of the Labour Court delivered in the ULP complaint, without exhausting the remedy of a revision petition under Section 44 of the MRTU & PULP Act, 1971. However, as this petition has been admitted and it is pending in this Court for 19 years, that I am entertaining this petition.

5 Despite service of the court notice, while granting interim relief and even after admitting this petition, no appearance has been entered by the Respondent either in person or through an Advocate. The learned AGP submits that out of the four employees, who were before the

Labour Court, Smt.Sonabai Narayan is still in employment. Smt.Kevalbai Ananda Patil, Smt.Radhabai Abhiman and Shri Nagraj Walmiki are not in employment.

6 The Respondent/Union espoused the cause of these four employees contending that they were working from 1984 and were orally terminated on 13.09.1989. Their last drawn wages were at the rate of Rs.16/- per day.

7 I have gone through the petition paper book and the record available. I find that besides the contention in the complaint and the affidavit (oral evidence), there was not a single document before the Labour Court to indicate the presence of these employees on duty.

8 An application for production of documents Exhibit U/9 was filed. The Labour Court directed the Petitioner to produce the documents. Since the Petitioner failed to produce the documents, the Labour Court has drawn an adverse inference and it is purely on the basis of such adverse inference that the Labour Court has concluded that two employees were working from 1985 and one employee was working from 1987. All claimed to be orally terminated on 13.09.1989. Interim relief was granted by the Labour Court on 12.12.1989 and it was admitted by

the Petitioner's witness in cross-examination that these four employees were reinstated on 15.12.1990.

9 The non production of documents despite the direction of the Labour Court would surely lead to an adverse inference. However, the case in hand is quite peculiar. Besides the said adverse inference, there is not a shred of evidence which would convince the Court to conclude that these four employees were working on daily wages at some point in time with the Petitioner. The Written Statement at Exhibit C-7 filed by the Petitioner indicates that some work was allotted on contract basis. As the daily wage work on the project was not available, all the daily wagers, who were engaged on contract basis, were disengaged on 29.07.1989. All these employees were working intermittently and none of them had worked continuously for 240 days even in one calender year.

10 Since the Petitioner did not produce the documents as directed by the Labour Court, an adverse inference was drawn and the impugned judgment rests only on such adverse inference. In my view, granting relief of reinstatement in service with continuity and back wages at the rate of 75% cannot be sustained in the absence of corroborative evidence and surely not on the sole basis of an adverse inference.

11 The Petitioner submits that Smt.Sonabai Narayan is still working and other three employees are not working.

12 Considering the above, this Writ Petition is partly allowed. The impugned judgment of the Labour Court dated 19.12.1996 is modified. The direction of reinstatement with continuity and back wages is set aside and is replaced by the direction to the Petitioner to pay compensation of Rs.50,000/- (Rupees Fifty Thousand) each to Smt.Kevalbai Ananda Patil, Smt.Radhabai Abhiman and Shri Nagraj Walmiki, in lieu of reinstatement with continuity and back wages. Insofar as Smt.Sonabai Narayan is concerned, since she is in employment, she shall continue as such and considering her length of service from the date of her joining as a daily wager, she would be entitled for such benefits as may be available to her in law.

13 The Petitioner shall pay the amount of compensation to the said three employees as directed above within a period of TEN WEEKS from today. If the said amount is not paid within ten weeks from today, it would carry interest at the rate of 6% per annum from the date of this judgment till the actual payment and the said interest component shall be paid from the salary of the Phalotpadan Upsanchalak, Jalgaon Vibhag, Jalgaon. In short, the interest payable due to delay in paying the

compensation, would be recovered from the salary of the Phalotpadan Upsanchalak, Jalgaon Vibhag, Jalgaon and will not be paid from the State coffers.

14 Rule is made partly absolute accordingly.

kps

(RAVINDRA V. GHUGE, J.)