

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

WRIT PETITION NO. 3108 OF 1997

Jalgaon Municipal Council,
Jalgaon.
Through it's
Chief Officer.

...PETITIONER

-VERSUS-

Surendra Namdeo Wani,
Age : Major,
Residing at Shirsoli,
Taluka and District Jalgaon.

...RESPONDENT

...
Advocate for Petitioner : Shri V D Gunale.
Advocate for Respondent : Shri L.V.Sangit h/f Shri S.V.Dixit.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th January, 2017

Oral Judgment :

1 The Petitioner/ Municipal Council, presently Jalgaon City Municipal Corporation, has challenged the award dated 10.06.1997 delivered by the Labour Court, Jalgaon by which Reference (IDA) No.7/1995 has been partly answered in the affirmative and the Respondent has been granted reinstatement in service with continuity by setting aside the oral termination dated 01.05.1990. The prayer for back

wages has been rejected in the light of the purshis filed by the Respondent at Exhibit U/9.

2 Shri Gunale, learned Advocate for the Petitioner, has strenuously criticized the impugned award. He points out that this Court has granted status-quo on 11.08.1997 and subsequently, the matter was admitted on 03.10.1997 and status-quo order was continued. Consequent to the same, the Respondent is out of employment.

3 He has further criticized the impugned award on the ground that the Respondent has failed to prove that he has completed 240 days in continuous employment. Since he was daily wager, he should not have been granted reinstatement. He is out of employment from 01.05.1990 for the past about 27 years and there cannot be reinstatement at this stage.

4 Shri Sangit, learned Advocate appearing on behalf of the sole Respondent, has strenuously supported the impugned award. He draws my attention to the specific conclusions arrived at by the Labour Court that despite opportunities, the Petitioner neither led oral evidence nor did it place on record any document with regard to the service of the Respondent. The notice for production of documents with regard to the attendance-cum-wage register was filed vide Exhibit U/5. Though the said

application was allowed and the Labour Court directed the Petitioner to produce the record, the said documents were intentionally withheld from the Labour Court. On the basis of the available record, the Labour Court concluded that the Respondent had completed 240 days in the year 1986-1987 and 1987-1988. By drawing an adverse inference, the Labour Court, therefore, concluded that the Respondent had worked till 01.05.1990.

5 Shri Sangit, therefore, submits that in the above backdrop the contentions of the Petitioner do not deserve consideration since they have not led any evidence to dispute the contentions of the Respondent, inasmuch as the Petitioner deliberately held back the documents which were ordered to be produced by the Labour Court only with an intention of preventing the Labour Court to conclude as regards the continuous service of the Respondent. He, therefore, prays that the petition be dismissed.

6 I have considered the submissions of the learned Advocates as have been recorded above.

7 By a detailed order dated 22.08.2003, this Court allowed Civil Application No.4231/2002 filed by the Respondent/ Employee under Section 17-B of the Industrial Disputes Act, 1947. The Petitioner was

directed to pay the last drawn wages along with admissible allowances from the date on which the Civil Application was filed. Needless to state, it is settled law that the said wages under Section 17-B will have to be paid till the decision in this matter or till the Petitioner proves that the Respondent has acquired fresh employment or is gainfully employed. This has not been done by the Petitioner in this matter.

8 However, it cannot be ignored that the Respondent is out of employment for almost 27 years. An industrial dispute was raised in 1995 after five years of his oral termination. The Labour Court has concluded that he has put in five years in service.

9 In this backdrop, the Honourable Supreme Court in the following four judgments has ruled that compensation of Rs.30,000/- per year of service is an appropriate and practicable relief to be granted when an employee is out of employment for a long duration and had put in a short spell in service:-

- (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, this Writ Petition is partly allowed. The impugned award dated 10.06.1997 to the extent of grant of reinstatement with continuity of service, is modified. The Respondent shall be entitled for the last drawn wages along with interest as per the directions of this Court dated 22.08.2003 till December, 2016. By way of compensation in lieu of reinstatement in the light of the four judgments delivered by the Honourable Supreme Court, the Petitioner shall pay an amount of Rs.1,50,000/- (Rupees One Lac Fifty Thousand) to the Respondent within a period of TWELVE WEEKS from today, failing which the said amount shall carry interest at the rate of 6% per annum from the date of this order considering that the wages under Section 17-B have been granted.

11 Rule is made partly absolute in the above terms.