

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

WRIT PETITION NO. 2335 OF 1998

1 The State of Maharashtra.

2 The Executive Engineer,
Irrigation Department,
Division Osmanabad.

...PETITIONERS

-VERSUS-

1 Bapurao Dagdu Nilange,
Age : 37 years, Occupation : Service,
R/o Masla, Tq. & Dist.Latur.

2 Sambhaji Dhagwat Lokhande,
Age : 32 years, Occupation : Service,
R/o Masla, Tq. & Dist.Latur.

3 Namdeo Sangappa Tattapure,
Age : 32 years, Occupation : Service,
R/o Masla, Tq. & Dist.Latur.

4 Gopinath Pandhari Kadam,
Age : 32 years, Occupation : Service,
R/o Masla, Tq. & Dist.Latur.

5 Ram Eknath Alte,
Age : 32 years, Occupation : Service,
R/o Gadwad, Tq. & Dist.Latur.

6 Ld.Judge, Labour Court, Latur.

7 Ld.Member, Industrial Court at
Solapur.

...RESPONDENTS

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AGP for Petitioners : Shri N.T.Bhagat.

Advocate for Respondents : Shri V.D.Salunke.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2017

Oral Judgment :

1 Respondent Nos.6 and 7 are the Labour Court and the Industrial Court. Being unnecessary parties, they are deleted from the proceedings.

2 The Petitioner has challenged the judgment and order dated 21.07.1997 delivered by the Labour Court by which Complaint (ULP) Nos.18/1995 and 28/1995 filed by Respondent Nos.1 to 5 have been allowed and they have been granted reinstatement with continuity and back wages. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 16.02.1998 by which Revision (ULP) No.62/1997 filed by the Petitioner against these Respondents, has been dismissed.

3 It is undisputed in the light of the affidavit in reply filed on behalf of the employees on 26.08.2014 that none of these Respondents have been reinstated in service and all of them are out of employment from 16.01.1995 for the last 22 years.

4 The Respondents were before the Labour Court by filing the ULP complaints under item (1) of Schedule IV of the MRTU & PULP Act, 1971. It was averred that they have been terminated on 16.01.1995 orally and Sections 25-F and 25-G of the Industrial Disputes Act, 1947 have been violated. They claimed to have worked from January, 1992 till December, 1995.

5 The Petitioners filed their Written Statement and indicated that these Respondents were working intermittently and had put in 45 to 52 days in employment during 1992-1993. It was specifically contended that neither of them have worked continuously, nor they worked in the uninterrupted service of the Petitioner from January, 1992 till December, 1995.

6 These Respondents had specifically averred before the Labour Court that their names are maintained on the muster register and if the muster register for the period 1992 to 1995 is produced, their continued employment would be proved. On 14.12.1995, by order at Exhibit O-9, the Labour Court directed the Petitioner to produce the muster registers. However, the same were not produced and as such, an opportunity of establishing that the Respondents are not in continued employment, was squandered away by the Petitioners.

7 The Respondents had in their possession, some chits indicating the work performed by them. Exhibits U/13/1, U/12/3, U/12/5, U/12/5/A, U/12/5/B, U/12/6 and U/12/7 were some of the documents which were produced by the Respondents. It cannot be disputed that these documents indicate the work done on certain days in 1993, 1994 and 1995. There is no document on record to indicate that these Respondents had worked in 1992.

8 Considering the documents produced in between 1992 to 1995 and considering that an adverse inference was drawn against the Petitioner on account of non production of muster registers, the Labour Court concluded that the Respondents were in employment in between 1992 to 1995.

9 The Industrial Court had a re-look at the documents while dealing with the revision petition filed by the Petitioner and it concluded that the findings of the Labour Court are not perverse or erroneous.

10 It is, therefore, evident that the Respondents worked for about three years though intermittently and are out of employment for 22 years.

11 The Honourable Supreme Court has taken a view in the matters of such nature in the following four cases that where the employees have put in a short spell of service and are out of employment for a long duration, quantifying the compensation at the rate of Rs.30,000/- per year of service put in by them, would be an appropriate relief rather than granting reinstatement with continuity and back wages:-

- (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].*

12 Considering the above, this Writ Petition is partly allowed. The direction by the Labour Court granting reinstatement with continuity and back wages is set aside and is replaced by the direction to the Petitioner to pay compensation of Rs.90,000/- (Rupees Ninety Thousand) to each of Respondent Nos.1 to 5 in lieu of reinstatement, continuity and back wages. Consequentially, the judgment of the Industrial Court is set

aside and the revision petition is disposed of.

13 The Petitioner shall pay the said amount of compensation to the Respondent Nos.1 to 5 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 Executive Engineer, Irrigation Department, Osmanabad Division. In short, the interest payable due to delay in paying the compensation, would be recovered from the salary of the Executive Engineer and will not be paid from the State coffers.

14 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)