

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

Writ Petition No. 02421 of 1998

District : Ahmednagar

The State of Maharashtra,
through Executive Engineer,
Public Works Department,
Sangamner, Dist. Ahmednagar.

.. Petitioner
(Original first party)

versus

Anjabapu Jagadeo Rakate,
Age : 26 years,
R/o. Dhangarwadi,
Post Wakadi,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original second party)

With

Writ Petition No. 02422 of 1998

District : Ahmednagar

The State of Maharashtra,
through Executive Engineer,
Public Works Department,
Sangamner, Dist. Ahmednagar.

.. Petitioner
(Original first party)

versus

Sitaram Dagadu Rashinkar,
Age : Major,
R/o. Dhangarwadi,
Post Wakadi,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original second party)

With

Writ Petition No. 02423 of 1998**District : Ahmednagar**

The State of Maharashtra,
through Executive Engineer,
Public Works Department,
Sangamner, Dist. Ahmednagar.

.. Petitioner
(Original first party)

versus

Dnyandeo Tukaram Admane,
Age : 29 years,
R/o. Dhangarwadi,
Post Wakadi,
Taluka Shrirampur,
District Ahmednagar.

.. Respondent
(Original second party)

.....

*Mr. S.N. Kendre, Mr. N.T. Bhagat and
Mr. S.P. Tiwari, Asst. Government Pleaders,
for the petitioner.*

Mr. N.C. Garud, Advocate, for the respondents.

.....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 02ND MARCH 2017

ORAL JUDGMENT :

01. In all these petitions, the petitioners have challenged the identical judgment and award dated 30.07.1997 in Reference (IDA) No. 032/1990, Reference (IDA) No. 035/1990 and Reference (IDA) No. 034/1990. The directions issued by the Labour Court, identically in all these three matters, read as under:-

" Reference is partly allowed.

The First Party is hereby directed to take the Second Party workman as a majoor on daily wages at prevailing rate without continuity of service and back wages.

Order to take effect from the date of Order. "

02. While admitting these matters, this Court has stayed the above said directions.

03. I have heard the learned Asst. Government Pleader for the petitioner and Shri Garud, learned Advocate appearing on behalf of the respondents. With their assistance, I have gone through the petitions and annexures thereto.

04. The Labour Court has framed following issues in the References before it and has assigned answers thereto as under :-

<u>Issues</u>	<u>Findings</u>
1. Does the second party prove that the first party terminated his services illegally and improperly ?	-- In the negative
2. Does the second party prove that he is entitled for the reinstatement and back wages ?	-- In the negative
3. What order ?	-- As per final order.

05. It is, therefore, apparent that the Labour Court concluded that the termination of these respondents was not illegal, was not improper and they were not entitled for reinstatement and back wages. In all these matters, the Labour Court concluded that these respondents had not worked for 240 days in continuous employment with the petitioner and as such, they were not entitled for any relief as Section 25F of the Industrial Disputes Act, 1947, has not been attracted. It was also concluded that there was no appointment order and none of these respondents are, therefore, entitled to any relief in the reference case.

06. Notwithstanding the above, the Labour Court has arrived at a strange conclusion in paragraph 11 of these impugned judgments, as under :-

" It is proved that the workman was working as a majoor on daily wages. Admittedly the first party is a Government Establishment namely Public Works Department, doing work of repairing and levelling roads and painting trees etc. Therefore, it must be having work which can be provided to the majoor. Considering this fact, I am of the view that direction may be given to the first party to give the work to the workman as a majoor as he has already worked for the first party as a majoor. "

07. It is trite law that unless an illegality in the act of the respondent is proved and unless termination or disengagement of an employee is proved to be unsustainable and amounting to illegal retrenchment, no relief can be granted. It is equally settled that the employer / Establishment has to be held guilty of committing illegal acts of terminating the employees and only then the Labour Court can grant consequential reliefs.

08. I am astonished to note that when the Labour Court has specifically come to the conclusion that none of these respondents are entitled to any relief in these reference proceedings, the Labour Court suddenly concludes in paragraph 11 that as the petitioner is a Government Establishment, repairing and levelling of roads and painting of trees is constantly done and hence, the respondents should be given employment as a daily wager. The said conclusion is apparently in opposition to the law laid down by the Hon'ble Apex Court and which has been reiterated in its judgment delivered in the case of **Secretary, State of Karnataka Vs. Umadevi & others** [(2006) 4 SCC 1]. In public employment, such directions based on misplaced sympathy and in the

absence of any illegality committed by the establishment, cannot be sustained.

09. Shri Garud, learned Advocate for the respondents, strenuously submits that some compensation be granted to these respondents. He cites an example where this Court has granted such compensation. I find his submissions to be fallacious for the reason that this Court has granted compensation to those employees who have proved that they have worked continuously for a few years, had proved illegal termination and reinstatement in service was not practical and pragmatic owing to a long spell of unemployment during the litigation. This Court had granted compensation relying upon the following four judgments :-

- (1) *Asst. Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal* [2013 LLR 1009];
- (2) *Asst. Engineer, Rajasthan Development Corporation & another Vs. Giram Singh* [(2013) 5 SCC 136].
- (3) *BSNL Vs. Man Singh* [(2012) 1 SCC 558]
- (4) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327].

(7)

W.P. Nos. 02421, 02422
& 02423 of 1998

10. In the light of the above, these petitions are allowed. The impugned awards dated 30.07.1997 are quashed and set aside and Reference (IDA) No. 032/1990, Reference (IDA) No. 035/1990 and Reference (IDA) No. 034/1990, respectively, are answered in the negative.

11. Rule is made absolute in the above terms.

(Ravindra V. Ghuge)
JUDGE

.....