

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

WRIT PETITION NO. 2484 OF 1997

M/s Ajanta Pharma Limited,
a Company incorporated under the
Companies Act, 1956, O-30,
MIDC Industrial Area, Chikalthana,
Aurangabad-431210.
Through its Works Manager.

...PETITIONER

-VERSUS-

1 Raosaheb Bhagwan Shingare,
 R/o Takli (Shimpi), Post Bhalgaon,
 Taluka and District Aurangabad.

2 The Hon'ble Judge,
 Labour Court, Aurangabad.
 (Deleted vide order dated 24.11.2016).

...RESPONDENT

...
Advocate for Petitioner : Shri Uday V Khonde.
Advocate for Respondent : Smt.PV.Langhe h/f Shri V.R.Langhe.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th January, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the award delivered by the
Labour Court dated 08.01.1997 by which Reference (IDA) No.14/1991
has been allowed and the Petitioner is directed to re-employ the

Respondent/ Workman on the same terms and conditions of service as were prevailing at the time of his oral termination, by way of good gesture within a period of one month.

2 While issuing notice on 14.07.1997, this Court granted ad-interim relief in terms of prayer clause (D) and thus, stayed the impugned award. By order dated 13.11.1997, the petition was admitted and interim relief was continued.

3 I have heard the learned Advocates for the Petitioner/ Factory and on behalf of the Respondent/ Employee.

4 It is strenuously submitted by the Petitioner that unless the Labour Court arrives at a conclusion that the Employer is guilty of unfair labour practices, no relief can be granted to the Workman. Reliance is placed on the judgment of this Court in the matter of *Shrirampur Municipal Council vs. Laxman Chimaji Namde*, **2016 (1) Bom.LC 9**.

5 It is further submitted that unless the Labour Court comes to the conclusion that the disengagement of the Respondent, who was a casual daily wager, amounts to illegal termination and therefore, tantamounts to illegal retrenchment, no relief could have been granted.

6 The learned Advocate for the Respondent has strenuously supported the impugned award. The contention is that the Petitioner Management did not produce necessary muster-cum-wage register maintained in connection with the daily wagers as well as casual labourers over the period of July, 1984 till 1990. The said documents were in the exclusive custody of the Petitioner. In the absence of such documents, the Petitioner has not assisted the Labour Court.

7 It is further submitted that the Respondent was working with the Petitioner from 03.07.1984 and was orally terminated on 07.01.1990. An industrial dispute was raised promptly and the matter was referred to the Labour Court in 1991. Since then the Respondent has been litigating with the Petitioner and as such, this Writ Petition be dismissed.

8 Upon considering the submissions of the learned Advocates, I have gone through the petition paper book and the record available.

9 The Respondent/ workman claimed to have been working from July, 1984 till 06.01.1990. The record that was produced before the Labour Court indicated that the Respondent was working for a period of 88 days in between 03.07.1984 upto 20.09.1984. Thereafter, he had

worked from 01.01.1990 till 07.01.1990. Notwithstanding this position, the Respondent did not issue a notice for production of documents.

10 It is trite law that the burden of proving continuous service and completion of 240 days, is on the shoulders of the claimant/workman. By making a mere statement in the Statement of Claim or the Complaint or in the pleadings, would not mean that the burden has been discharged or that it would then shift to the shoulders of the Management. Unless the initial burden is not discharged, it would not shift to the Management. Had the Respondent sought the production of documents by taking the aid of Order 11 Rule 12 or Order 11 Rule 14 of the Code of Civil Procedure, there was possibility for the Labour Court to draw an adverse inference if the documents were not produced by the Management.

11 There is no dispute that there are certain observations in the impugned award which are against the Respondent/ Workman. It is also not in dispute that he has not challenged the said award.

12 In the above backdrop, I find it apposite to reproduce the conclusions drawn by the Labour Court on the internal page 6 below paragraph 11 of the impugned award, which has not been challenged, as

under:-

"I think the story of the II party workman as pleaded by him in his statement of claim vide Exhibit U-2 is in connection with what he has adduced in his oral evidence. Here is a clear cut admission on his part which would not help him or against him in either way to prove his case. I think on the facts and circumstances and after perusing the documents on record and oral evidence and register for attendance cum payment register and on the strength of very admission of the II party workman vide exh.0.4 as referred to above by him, it could be held that the II party workman is utterly failed to prove that he has dualifying service or minimum continuous service as contemplated u/s 25(B) of the Industrial Disputes Act, 1947. At this juncture also the reference is liable to be dismissed with costs."

13 Considering the above, it is apparent that the Labour Court concluded that the Respondent/ Workman had failed to prove that he was performing his service and had completed continuous service as required under Section 25-B of the Industrial Disputes Act, 1947. It was concluded that the reference is liable to be dismissed with costs.

14 Surprisingly, the Labour Court takes a complete somersault in paragraph 12 of the impugned award which reads as under:-

"12. However, it is cardinal principle of law as far as service jurisprudence is concerned as laid down right by the Hon'ble Apex Court of the land to that of our Hon'ble Bombay High Court, it is settled that the right to work has been included in the right to live with dignity as per article 21 of the Constitution of

India. In the famous judgment of P.L.Yadav of Hon'ble Supreme Court of India, to live life with dignity would be an empty formality as if anybody is not provided with employment to earn his livelihood to maintain himself and his family members but on the other hand if deprived him on that fundamental right bestowed by Constitution of India. Therefore, these are legal precedents framed time and again till the date, with this view in mind and from the facts and circumstances it would be advisable to adopt a pragmatic and rational view in this matter if I consider sympathetically the facts and circumstances; and the documents placed on record by both the parties; and after having scanned the evidence led by both parties to the litigation, I am of the view that ends of justice and equity would definitely meet if I am inclined to pass the following order.

Order

The reference stands allowed.

The I party employer i.e. Manager, Ajinta Pharma Company Limited, Aurangabad, is hereby directed to re-employ Shri Raosaheb Bhagwan Shingare, Helper with it with the same terms and conditions of service as prevailing prior to his alleged oral termination by way of good gesture within a period of one month from the date of publication of Award; without any benefits of continuity and full back wages.

There is no order as to costs."

15 It is, therefore, clear that the Labour Court held that the case of the Respondent can be sympathetically considered and by way of a good gesture, he could be granted reemployment on the same terms and conditions of service.

16 To say the least, the Labour Court has completely misdirected

itself. It is trite law that the Court should not indulge in showing misplaced sympathy and effective directions of the Court cannot be based on purely sympathetic grounds.

17 Considering the above, this Writ Petition is allowed. The impugned award dated 08.01.1997 is quashed and set aside and Reference (IDA) No.14/1991 stands answered in the negative.

18 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)