

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

WRIT PETITION NO. 5544 OF 1999

Chief Officer,
Ahmednagar Municipal Council,
Ahmednagar.

...PETITIONER

-VERSUS-

Laxman Vishwanath Bagal,
Age : Major,
Occupation : Service,
R/o Savedi,
Taluka and district Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri V.S.Bedre.
Advocate for Respondent : Shri P.V.Barde.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th May, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the award dated 23.12.1997 by which the Labour Court has allowed Reference (IDA) No.80/1993 and has directed the Petitioner to induct the Respondent/ Workman on daily wages at the prevailing rate.

2 While admitting this petition on 09.07.2001, this Court

refused interim relief to the Petitioner.

3 I have heard the strenuous submissions of Shri Bedre, learned counsel for the Petitioner and Shri Barde, learned counsel for the Respondent.

5 There is no dispute that though this Court did not grant any interim relief in favour of the Petitioner, the Petitioner Authority has failed to implement the impugned award dated 23.12.1997. This aspect would become relevant while quantifying compensation to the Respondent.

6 It is equally undisputed that after the Respondent/ Workman raised the industrial dispute and the reference was addressed to the Labour Court, he has merely pleaded in the statement of claim that he was working as "Majdoor" from 01.01.1988 till 01.03.1991. The nature of work performed by him is not stated in the statement of claim. It is averred that he used to be given the work for about 15 to 20 days in each month and that is how he has continuously worked in the above stated period.

7 The Petitioner filed it's Written Statement and denied that the Respondent was working continuously. A chart was produced before the

Labour Court to indicate that the Respondent had worked for 56 days in 1988, 87 days in 1989 and 68 days in 1990. However, the Petitioner Authority neither signed the said chart nor did the Petitioner lead any evidence before the Labour Court. The Respondent stepped into the witness box and merely averred that he had worked from 01.01.1988 till 01.03.1991. Even in the oral deposition, the Respondent did not narrate the nature of work allotted to him.

8 I do not find from the award that a notice for production of certain documents was issued by the Respondent and that the Labour Court had allowed such an application and ordered the Petitioner to produce such documents. Similarly, there is no mention of any adverse inference having been drawn against the Petitioner for having not produced any record. It is apparent from paragraph 7 of the impugned award that the Labour Court has concluded that as the Petitioner Establishment did not step into the witness box, the Labour Court is accepting the oral testimony of the workman that he was orally terminated from 01.03.1990. Based on this presumption, the Labour Court concluded that the oral statement of the Petitioner that he has worked from 01.01.1988 to 01.03.1990 needs to be accepted.

9 It is trite law that the onus and burden of proving continuous

employment is on the workman. Had the Respondent issued the notice for production of documents and had the Labour Court directed such production, non production of these documents would have been a ground for drawing an adverse inference against the Petitioner.

10 In the light of the above and in the absence of any evidence to conclude that the Respondent had worked for a continuous period of 240 days in each calender year and especially in the 12 calender months prior to the date of the purported termination in the light of Sections 25-B and 25-F of the Industrial Disputes Act, 1947, I do not find that the impugned award could be sustained.

11 It, however, cannot be ignored that though this Court declined interim relief to the Petitioner, the impugned award has not been implemented for the last 18 years. It is for this reason, that I am imposing costs on the Petitioner to be paid to the Respondent so as to reduce the rigours of litigation suffered by him.

12 Considering the above, this Writ Petition is partly allowed. The impugned award dated 23.12.1997 is quashed and set aside and Reference (IDA) No.80/1993 stands answered in the negative. For the reasons recorded as above, the Petitioner shall pay quantified costs as

compensation to the Respondent of the sum of Rs.50,000/- (Rupees Fifty Thousand) within a period of TWELVE WEEKS from today.

13 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)