

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

WRIT PETITION NO. 4215 OF 1997

M/s Kinetic Engineering Limited.
Nagar Dound Road, Ahmednagar.
Taluka and District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Shri Narayan Venkatesh Bura,
Age : Major, R/o 497-98,
Topkhanabajar, Ahmednagar.
- 2 The Presiding Officer,
Labour Court, Ahmednagar,
Seth Suratsing Bhavan,
Savedi Road, Ahmednagar,
Taluka and District Ahmednagar.

...RESPONDENTS

WITH
WRIT PETITION NO.4117 OF 2004

Kinetic Engineering Limited,
Ahmednagar, Dond Road,
Ahmednagar.

...PETITIONER

-VERSUS-

Shri Narayan Venkatesh Bura,
Age : 45 years, Occupation : Business,
R/o 497-98, Topkhanabajar,
Ahmednagar.

...RESPONDENT

...

Advocate for Petitioner : Shri V.S.Bedre.

Advocate for Respondent : Shri P.V.Barde h/v Shri S.B.Joshi.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th January, 2017

Oral Judgment :

1 Respondent No.2 in Writ Petition No.4215/1997 being the formal party, stands deleted.

2 Both these petitions have been filed by the Petitioner Industry. In the first petition, the award dated 19.05.1997 by which the Labour Court partly allowed Reference (IDA) No.58/1988 has been challenged. In the second petition, interim order dated 21.10.2003 passed by the Industrial Court in Complaint (ULP) No.81/1998 directing the Petitioner to implement the award dated 19.05.1997 has been challenged.

3 I have considered the strenuous submissions of the learned Advocates for the respective sides.

4 It is undisputed that the Respondent was working from 15.03.1983 to 15.03.1984 with the Petitioner. He assailed his oral termination in Reference (IDA) No.58/1988. On account of non compliance of Section 25-F of the Industrial Disputes Act, 1947, the

Labour Court granted reinstatement with continuity w.e.f. 01.03.1991 and 50% back wages from 01.03.1991 keeping in view that subsequently the Respondent/ Employee was engaged from 02.09.1990 upto 01.03.1991.

5 In the first petition, this Court did not stay the impugned award while admitting the petition on 13.11.1997. Consequentially, the Respondent preferred Complaint (ULP) No.81/1998 under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 before the Industrial Court seeking implementation of the said award dated 19.05.1997. The Industrial Court allowed the interim application by order dated 21.10.2003 and directed the Petitioner to implement the award. This Court, by order dated 16.03.2006, admitted the second petition and stayed the interim order of the Industrial Court. Consequentially, the Respondent/ Employee is out of employment from 16.03.1984 till today which is about 33 years. His engagement from 02.09.1990 to 01.03.1991 is inconsequential since that is not a part of any litigation.

6 Shri Barde, learned Advocate, points out that in identical set of facts involving the same Petitioner Industry in Writ Petition No.669/1997 (*M/s Kinetic Engineering Limited vs. Ajay Irrappa Basapure*) and Writ Petition No.2162/1997 (*M/s Kinetic Engineering Limited vs. Pramod Gangadhar Mohite*), this Court has granted compensation at the

rate of Rs.40,000/- per year of service put in by the said employees, by judgments dated 13.10.2016 and 08.12.2016, respectively.

7 This Court had observed in paragraphs 4 to 8 in the order dated 13.10.2016 in the matter of Ajay Irrappa Basapure (supra) as under:-

- "4. *There is no dispute that the respondent was engaged as a temporary for the period 14.10.1984 to 13.04.1984 and 21.04.1985 to 22.11.1985 by the Ahmednagar Unit of the petitioner. The Chinchwad Unit of the petitioner engaged him from 22.01.1986 till 31.07.1986 and 08.04.1987 till 07.10.1987. He has thus worked for a total period of 25 months in between October 1984 till October 1987.*
5. *It is not in dispute that the respondent is not working with the petitioner since 08.10.1987 over a period of almost 29 years. It is also not in dispute that his last drawn wages were at the rate of Rs.650/- per month.*
6. *By an order dated 12.06.1997, this Court stayed the impugned award and granted liberty to the petitioner to consider offering work to the respondent.*
7. *The Honourable Apex Court in the following four cases has settled the law that where a small tenure of employment has been put in by the employee, followed by a long spell of unemployment, grant of compensation instead of reinstatement and continuity and backwages would be appropriate:-*
 1. *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],*
 2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],*
 3. *BSNL Vs. Man Singh [(2012) 1 SCC 558] and*
 4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].*

8. *In the instant case the respondent has worked under four appointment orders as a temporary employee over a period of three years. The petitioner is a private company and is not a 'State instrumentality'. Though the impugned award has been stayed by this Court, the respondent had not been granted Section 17B benefits under the Industrial Disputes Act, 1947. Considering this aspect that he would have been entitled to Section 17B benefits and that the petitioner is a private entity, I am enhancing the amount of compensation from Rs.30,000/- per year to Rs.40,000/- per year, as the view taken by the Honourable Supreme Court was in matters of 'State instrumentalities'.*
9. *In the light of the above, this petition is partly allowed. The impugned award dated 28.6.1996 in Reference (IDA) No.87 of 1998 is modified and the respondent is granted compensation of an amount of Rs.1,20,000/- as quantified compensation and he would not be entitled for any other benefits in relation to his employment and non-employment. The said amount shall be paid to the respondent / employee within a period of 12 weeks from today, failing which the said amount would carry interest at the rate of 6% per annum from the date of the award."*

8 Considering the above, though the Respondent/ Employee, in this matter, has put in one year and six months in service which would entitle him to compensation of Rs.60,000/-, I am granting him compensation of Rs.80,000/- (Rupees Eighty Thousand) keeping in view that he had to file Complaint (ULP) No.81/1998 before the Industrial Court seeking implementation of the award dated 19.05.1997 as this Court had not stayed the award in the first petition. The interim order passed in the complaint was brought to this Court in the second petition

and as such, the Respondent was once again dragged into litigation.

9 In the light of the above, the impugned award dated 19.05.1997 stands modified and the Petitioner is directed to pay an amount of Rs.80,000/- (Rupees Eighty Thousand) to the Respondent/ Employee within a period of SIX WEEKS from today, failing which the said amount shall attract interest at the rate of 6% per annum from the date of the award dated 19.05.1997 till it's actual payment. The first petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

10 Consequentially, Complaint (ULP) No.81/1998 does not survive and the same shall stand disposed of, if not already decided or disposed of by the Industrial Court. The interim order dated 21.10.2003, which is subject matter of the second petition is, therefore, set aside. The second petition is, therefore, partly allowed. Rule is made partly absolute accordingly.