

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4559 OF 1998

Jamshid Khan Gulsher Khan Pathan,
R/o. Ward No. 2, Shrirampur,
Dist. Ahmednagar. ...Petitioner.

Versus

Shrirampur Municipal Council,
Shrirampur, Dist. Ahmednagar
Through its Chief Officer. ...Respondent.

WITH

WRIT PETITION NO. 4295 OF 1999

Shrirampur Municipal Council,
Shrirampur,
through its Chief Officer. ...Petitioner.

Versus

Jamshedkhan S/o. Mulsherkhan Pathan,
Age. 33 years, Occ. Nil,
R/o. Ward No. 2, Shrirampur,
Tq. Shrirampur,
Dist. Ahmednagar. ...Respondent.

Advocate for Petitioner : Shri V.N. Upadhye in WP No. 4559/98.
Advocate for Respondent : Shri V.S. Bedre in WP No. 4559/98.
Advocate for Petitioner : Shri V.S. Bedre in WP No. 4295/99.
Advocate for Respondent : Shri V.N. Upadhye in WP No. 4295/99.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 06th July, 2017

ORAL JUDGMENT :

1. The petitioner / workman is aggrieved by the judgment and award dated 23/02/1998, delivered by the learned II Labour Court, Ahmednagar, by which, Reference (IDA) No. 98/1992 has been allowed, but the petitioner is granted reinstatement as a daily wager on the post from which he was terminated on 16/07/1990.

2. Shri Upadhye, learned advocate for the petitioner in this first petition submits that this petition was filed as the petitioner wanted regular and continuous employment and he is praying for continuity and full back wages.

3. Shri Upadhye, submits on instructions from the workman, who is present in the Court, that his date of birth is 15/11/1958, and he is about 58 years and 8 months of age today. He has, therefore, crossed the age of superannuation which is 58 years with the respondent / Municipal Council.

4. The Municipal Council, Shrirampur has challenged the

same award to the extent of the grant of relief of reinstatement, in the second writ petition.

5. The Municipal Council has filed the second petition on 15/09/1998, before the first petition was filed by the workman on 21/09/1998. However, the second petition got its number in 1999. Both the learned advocates submit by consent that the second petition should be heard along with the first petition as, both the petitions impugn the same award from the same case before the Labour Court. It would be in the interest of both the sides that the second petition is heard together with the first petition.

6. Shri Upadhye, submits that his petition deserves to be allowed and the petitioner deserves to be granted continuity of service with reinstatement and full back wages from 16/07/1990. He states that the petitioner is not in employment for last 27 years.

7. The Hon'ble Apex Court has dealt with a somewhat

similar situation of an employee having put in a short spell of employment and being out of employment for a long duration as like 15 years, 20 years, 25 years or even 30 years. The Hon'ble Apex Court concluded that in such cases, grant of reinstatement would not be practicable and pragmatic and grant of compensation in lieu of reinstatement at the rate of about Rs. 30,000/- (Rupees Thirty Thousand only) per year of service put in, would be the proper compensation. This view has been taken by the Hon'ble Apex Court in the following four cases :

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Versus Mohan Lal **[(2013 LLR 1009)]**
2. Assistant Engineer, Rajasthan Development Corporation and another Versus Gitam Singh **[(2013) 5 SCC 136]**
3. BSNL Versus Man Singh **[(2012) 1 SCC 558]**
4. Jagbir Singh Versus Haryana State Agriculture Marketing **[(2009) 15 SCC 327]**

8. It is trite law that in State instrumentalities like Municipal Councils, Corporations, Zilla Parishads or of similar nature,

unless the posts are created and are available and vacant, there is no question of directing continued employment or permanency. Provisions like Standing Order 4 C and 4 D of the Model Standing Orders framed under the Industrial Employments (Standing Orders) Act, 1946, would not be applicable. In such, situations, on taking into account that the daily wagers are in continued employment and are still working, this Court in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Versus Vishal Vijay Amrutrao and others, [2015 (5) Mh.L.J. 75] and in the matter of Municipal Council, Tuljapur Versus Baban Hussain Dhale in WP No. 1843/2015, has concluded that the proposals of such daily wagers should be considered for regularization based on their length of service, their seniority and permanent vacant posts available.

9. The learned Division Bench of this Court at Nagpur had taken up a reference matter considering the conflict of view between two learned Single Judges and has delivered a judgment in the matter of Municipal Council, Tirora and others Versus Tulsidas Baliram Bindhade [2016 (6) Mh.L.J. 867]. It is

held that completion of 240 days in continued employment before the date of reference will not entitle any litigant to continued employment or permanency or regularization.

10. Shri Upadhye, has strenuously submitted that after the termination of the petitioner, who had worked in between December, 1987 up to his oral termination in July, 1990, several other temporaries were granted regularization. This aspect does not find place in the oral and documentary evidence recorded before the Labour Court and hence it does not find any mention in the impugned award.

11. The contention of the petitioner that after completion of 240 days, the petitioner automatically becomes permanent in the light of the award delivered by the Industrial Tribunal, Ahmednagar, in Reference (IDA) No. 6/1984, cannot be accepted since the issue before the Labour Court was only as regards whether the service of the petitioner was illegally terminated. Issue of permanency was not before the Labour Court and hence I am not required to deal with that aspect.

12. The Hon'ble Apex Court has concluded in Chief Conservator of Forest Versus Jagannath Maruti Kondhare, [AIR 1996 SC 2898], has held that when there is no post available, a litigant cannot insist for his absorption. However, if he is working and is performing the same work as is done by the regular employees, he would, at best be entitled to the same wages on the principle of "equal wages for equal work."

13. The Municipal Council, Shrirampur has filed Writ Petition No. 4295/1999, challenging the same award. Grievance is that the temporary workman at issue namely Jamshid Khan Gulsher Khan Pathan has not worked for 240 days in the continued employment of the council and yet the Labour Court has directed the Council to take him on daily wages on the post from which he was terminated.

14. It is apparent from the impugned award that the Labour Court has concluded that the workman has completed 240 days on the basis of the original muster rolls and pay sheet produced by the witness of the Octroi Department of the Municipal

Council and who deposed that the workman was working on daily wages from 04/12/1887 to 16/07/1990. This documentary evidence proves that the temporary was working for about three years with the Municipal Council.

15. Considering the above, I do not find that the impugned award could be termed as being perverse or erroneous to the extent of its conclusion that the workman had worked continuously for about 3 years.

16. In so far as the petition filed by the temporary workman is concerned, he has proved that he worked for about 3 years and is out of employment for the last about 27 years. He is still litigating in the Court. In this backdrop, I deem it proper to modify the award and grant compensation to the temporary namely Jamshid Khan Gulsher Khan Pathan, an amount of Rs. 1,00,000/- (Rupees One Lakh only), in the light of the ratio laid down by the Hon'ble Supreme Court.

17. Both the petitions are, therefore, partly allowed and by

applying the law laid down by the Hon'ble Apex Court, the impugned award is modified. The Municipal Council, Shrirampur is, therefore, directed to pay an amount of Rs. 1,00,000/- (Rupees One Lakh only) to the said worker within a period of 12 weeks from today, failing which the said amount shall carry interest at the rate of 6 % per annum from the date of the impugned award.

18. Rule is made partly absolute in the said terms.

(RAVINDRA V. GHUGE, J.)

S.P.C.