

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

Writ Petition No. 4468 of 2001

District : Aurangabad

The Chief Administrator,
Labha Kshetra Vikas Pradhikaran,
Garkheda, Aurangabad. .. Petitioner
(Original
Party No.01)

versus

Shri Mahadeo Narayan Dhane,
Age : 45 years,
Occupation : Nil,
R/o. C/o. Modern General Stores,
Pathari, Dist. Parbhani. .. Respondent
(Original
party No.02)

With

Writ Petition No. 4469 of 2001

District : Aurangabad

The Chief Administrator,
Labha Kshetra Vikas Pradhikaran,
Garkheda, Aurangabad. .. Petitioner
(Original
Party No.01)

versus

Shri Rama Baburao Gonge,
Age : 45 years,
Occupation : Nil,
R/o. Potewadi, Post Pathari
Taluka Pathari, Dist. Parbhani. .. Respondent
(Original
party No.02)

(2)

W.P. Nos. 4468, 4469 &
4470 of 2001

With

Writ Petition No. 4470 of 2001

District : Aurangabad

The Chief Administrator, .. Petitioner
Labha Kshetra Vikas Pradhikaran, (Original
Garkheda, Aurangabad. Party No.01)

versus

Shri Namdeo Dulbaji Kharat,
Age : 45 years,
Occupation : Nil, .. Respondent
R/o. Zari, Taluka Pathari (Original
Dist. Parbhani. party No.02)

.....

Mr. S.S. Thombre, Advocate, for the petitioner.

Mr. V.B. Garud, Advocate, for the respondents.

.....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 02ND MARCH 2017

ORAL JUDGMENT :

01. In all these petitions, the petitioner - establishment is aggrieved by the award dated 26.06.2001, by which, Reference (IDA) No. 15/1993, Reference (IDA) No. 188/1992 and Reference (IDA) No. 13/1993 have been partly allowed. The respondents - workmen are granted re-appointment from 30.01.1993. Continuity and back wages are not granted.

02. The operative part of the impugned award reads as under :-

"1. The Reference is answered partly in affirmative.

2. The party No.1 is hereby directed to give re-appointment to the party No.2 from the date of Reference i.e. 30.01.1993 with continuity of service but without back wages in Class IV category.

3. The claim of reinstatement with continuity and also with full back wages from the date of termination is denied.

4. No order as to costs.

5. This Award be submitted to the State Government of Industries & Labour Department, Mantralaya, Mumbai, through the Dy. Commissioner of Labour, Aurangabad.

6. The original papers of conciliation be sent to the Dy. Commissioner of Labour, Aurangabad, under intimation to the Government. "

03. In all these petitions, while passing the order on admission, no interim relief was granted to the establishment. Consequentially, it is informed that all these three respondents have been given fresh appointment on 15.12.2004. The respondent in the first petition - Mahadeo Narayan Dhane has attained the age of superannuation on 31.07.2014 and the respondent in the third petition - Namdeo Dulbaji Kharat has attained the age of superannuation on 20.02.2010. The respondent in the second petition - Rama Baburao Gonge is still in employment and his

retirement would be on 14.08.2019.

04. The Labour Court while partly answering the references in the affirmative, has concluded that some daily wagers were engaged in place of these respondents and hence Section 25H of the Industrial Disputes Act, 1947, has been violated. There is no dispute that these respondents were appointed on a project undertaken by the Government for the construction of the Jayakwadi Canal and Dam. The Superintending Engineer of the Jayakwadi Project had engaged such daily wagers purely for the said project. Hundreds of workers were engaged. It is equally undisputed that after the project came to an end, all such employees who were appointed as daily wagers purely on the said project were given three months' notice and were disengaged. These respondents - workmen remained silent for a period of almost 08 years before raising an industrial dispute.

05. In the impugned awards, the Labour Court has concluded that the reference cases with regard to the alleged illegal termination of the claimants was not maintainable as it was a stale dispute. None of these workers have challenged the said findings before this Court and have accepted the said conclusion.

06. In so far as the violation of Section 25H of the Industrial Disputes Act is concerned, by which

the Labour Court concluded that fresh hands were engaged and the respondents - workmen were disengaged, I find that the Labour Court has merely concluded that just because daily wagers were engaged and the respondents were disengaged, Section 25H has been violated and hence the respondents would be entitled for a fresh appointment from the date of the reference which is 30.01.1993.

07. In my view, considering that the petitioner is a State instrumentality and since sanctioned posts are not available, they are required to engage daily wagers to ensure that the work is not hampered, the Labour Court was not justified in directing issuance of fresh appointments with retrospective effect. These daily wagers were not in employment from 30.01.1993. The impugned awards were delivered on 26.06.2001. Considering that the petitioners are State instrumentalities and these daily wagers who have not worked over a period of 08 years from 1993 till 2001, so also, they were sleeping over their purported termination from 1984 till 1993, the Labour Court cannot be said to be justified in directing fresh appointment with retrospective effect.

08. In the light of the above, these petitions are partly allowed. Clause 02 of the direction of the Labour Court in the impugned award shall stand modified.

These respondents shall stand re-appointed in service from 01.07.2001, considering that the impugned award in their favour was delivered on 26.06.2001 and this Court has not stayed the award. For the period from 01.07.2001 till 14.12.2004, keeping in view that these respondents were reinstated on 15.12.2004, the petitioner shall pay 25 % back wages to these respondents for the said period within 12 weeks from today, failing which the said amount shall carry interest at the rate of 06 % from the date of the award of the Labour Court.

09. Rule is made partly absolute in the above terms.

(Ravindra V. Ghuge)
JUDGE

.....