

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3823 OF 1998

The State of Maharashtra
Through Executive Engineer,
Public Works Division,
Ahmednagar. ..Petitioner

Versus

Bapu Balchandra Gajare,
At post Ralegaon,
Tq. Parner, Dist. Ahmednagar. ..Respondent

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AGP for Petitioner : Shri N.T.Bhagat
Advocate for Respondent : Shri A.S.Shelke

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WITH
WRIT PETITION NO. 4487 OF 2000

Bapu Balchandra Gajare,
Age 32 years, Occ. Unemployed
R/o Ralegaon, Tq. Parner,
Dist. Ahmednagar. ..Petitioner

Versus

The State of Maharashtra
Through Executive Engineer,
Public Works Division,
Ahmednagar. ..Respondent

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Advocate for Petitioner : Shri A.S.Shelke
AGP for Respondent : Shri N.T.Bhagat

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 22, 2017

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ORAL JUDGMENT:-

1. The petitioner / establishment in the first petition is the respondent in the second petition, filed by the concerned employee, who is respondent in the first petition.
2. For the sake of brevity, the parties would be referred to as the “establishment” and the “workman”.
3. The establishment is aggrieved by the award dated 19.6.1997, by which, Reference (IDA) No.160 of 1993 has been partly allowed and the workman has been granted reinstatement as a daily wager and to be considered as per his seniority list from 1.4.1992. The workman is aggrieved by the refusal of the Labour Court to grant him continuity in service and backwages and has challenged the same award to that extent.
4. I have considered the submissions of the learned Advocates of the respective sides and have gone through the record available.
5. It is the case of the workman that he had worked from 20.5.1985 till 1.4.1987. He was engaged as a daily wager. Nature of duties performed by the workman have not been narrated before the Labour Court. It is merely stated that he was working with the

Parner Sub-Division for about 3-4 years, before his termination.

6. The establishment has placed on record before the Labour Court a chart mentioning the dates on which the workman worked, the serial number at which his attendance was recorded and the voucher number by which he was paid his wages. The said document was accepted by the Labour Court and the Labour Court specifically came to a conclusion in paragraph No.14 that the workman did not complete 240 days in continuous service in a calendar year and hence is not entitled to the retrenchment compensation and notice for his termination.

7. However, the Labour Court concluded that two daily wagers were engaged after the workman was dis-engaged and hence, the establishment deserves to be directed to reinstate the workman as a daily wager.

8. The establishment had specifically putforth a case that though the workman was orally engaged as a daily wager, he was not specifically terminated or removed from his work as a daily wager. He himself stopped reporting for duties. In between 20.5.1985 till 21.12.1985, he had worked for 129 days and in between 13.1.1986 till 20.10.1986, he worked for about 181 days.

9. The record reveals that on the one hand the workman did not produce any evidence to indicate his continuous employment in each calendar year and on the other hand, on the basis of the record, the Labour Court concluded that he has not established 240 days in continuous employment.

10. It, therefore, appears that the workman had worked for about 1 year and 5 months, which can be said to be about one and half years. From 21.10.1986, in the last about 31 years, he is not in employment after having worked for about 17 months. In such circumstances, the Honourable Apex Court has held in the following four judgments that compensation at the rate of about Rs.30,000/- per year of service put in by the daily wager would be an appropriate compensation and granting reinstatement after a long spell of unemployment, would neither be pragmatic nor practicable:-

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].

11. As the workman is in litigation and the impugned award is subject matter of challenge in this case, he is paid wages under Section 17B of the Industrial Disputes Act, at the rate of Rs.16/- per day. Contempt Petition No. 152 of 2002, filed by the workman was disposed off by this Court on 15.9.2002, after recording the statement of the establishment that he is paid his wages under Section 17B upto May 2002.

12. Considering the above and since the impugned award cannot be sustained, the first petition filed by the establishment is partly allowed and the second petition filed by the workman is disposed off.

13. The establishment shall, therefore, clear off the wages of the workman under Section 17B till June 2017 and shall pay compensation at the rate of Rs.30,000/- per year of service, which would be Rs.45,000/- as the workman had put in one and half years in service. Both these amounts would be paid to the workman within a period of three months from today, failing which the said amount would attract interest at the rate of 6% per annum from the date of this judgment, keeping in view that the wages under Section 17B are being paid. The said interest shall be recovered from the salary of the Executive Engineer, Public Works Department, Ahmednagar.

14. Rule in Writ Petition No.3823 of 1998 is made partly absolute in the above terms and Rule in Writ Petition No.4487 of 2000 stands discharged.

(RAVINDRA V. GHUGE, J.)

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