

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

WRIT PETITION NO. 2226 OF 1998

Ajay s/o Vasantryao Deshpande,
Age : 31 years, Occupation : Nil,
R/o Swami Vivekanand Nagar,
At Post & Taluka Sailu,
District Parbhani.

...PETITIONER

-VERSUS-

Assistant Engineer,
Class-I, Minor Irrigation
Sub Division No.3, Zilla Parishad,
Jintur, At Post and Taluka Jintur,
District Parbhani.

...RESPONDENT

...
Advocate for Petitioner : Shri Pradeep Shahane.
AGP for Respondent : Shri S.P.Tiwari.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd March, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the award delivered by the Labour Court dated 03.04.1997 by which Reference (IDA) No.22/1995 has been dismissed.

2 I have heard the strenuous submissions of Shri Shahane,

learned Advocate appearing on behalf of the Petitioner and the learned AGP on behalf of the Respondent.

3 The grievance of the Petitioner is that the rule of “last come, first go” has not been complied with by the Respondent and hence, his termination dated 01.11.1990 is unsustainable and is rendered illegal.

4 Shri Shahane submits that the Petitioner was working with the Respondent from 01.12.1989 in the Minor Irrigation Sub Division No.4. He worked in the said Sub Division upto 31.01.1990. From February, 1990, he worked with the Minor Irrigation Sub Division No.3 and was terminated by order dated 01.11.1990 w.e.f. 07.11.1990 on the ground that the work in the project has come to an end.

5 He, therefore, submits that having completed 240 days in continuous employment with the Respondent, his termination is rendered illegal. He had specifically averred in paragraph 8 of the affidavit that juniors were retained in service. As such, since 25-G of the Industrial Disputes Act, 1947 and Rule 81 of the Industrial Disputes (Bombay) Rules, 1956 have been violated, the Petitioner was entitled for reinstatement.

6 I find from the pleadings of the Petitioner that he has stated

the name of one Mr.K.D.Shobhane as being a junior employee, who has been retained in service when the Petitioner has been terminated. From the impugned award, it appears that neither has the Petitioner examined Mr.Shobhane, nor has he brought on record the appointment order of Shri Shobhane, the nature of his duties and the area in which he was performing his duties. It cannot be ignored that continuation of Shri Shobhane, who is mentioned by the Petitioner in his statement of claim as being a junior employee who has been retained, is an incorrect statement. The termination order dated 01.11.1990 issued to the Petitioner also includes the name of Shri K.D.Shobhane, who has also been terminated from service.

7 It is trite law that in order to invoke Section 25-G r/w Rule 81, the Complainant/ Claimant has to establish that the names of junior persons are pleaded and the evidence is brought on record to such an extent that it is established that these juniors are comparable with the claimant, they were performing the same work and they were working in the same department/ project. The retention of the junior employee working elsewhere in another department, which cannot be compared with the department of the claimant, cannot be a ground for invoking Section 25-G. In the absence of evidence to this extent, the Labour Court, in my view, has rightly rejected the claim of the Petitioner as regards the

violation of Section 25-G.

8 Insofar as the continued service is concerned, the record reveals that the Petitioner joined duties by name Ajay Vasantryao Deshpande in Sub Division No.4. Later, he was transferred to Sub Division No.3. He worked in the other departments in the name of Ajay Vinayakrao Deshpande. Notwithstanding this position, the record produced before the Labour Court indicated that the Petitioner had completed 218 days in his total employment from 01.12.1989 to 01.11.1990, which is a period of 11 months.

9 In the light of the above, I do not find that the impugned award could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)