

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7726 OF 2014

EKNATH BHAURAO RAIKAR
VERSUS
ADOR WELDING LIMITED, B-5, MIDC, AHMEDNAGAR

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Advocate for Petitioner : Shri Parag V. Barde
Advocate for Respondents : Shri Ashok V. Patil

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

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PER COURT :-

1. The petitioner is aggrieved by the judgment and award dated 4.9.2012, by which, Reference (IDA) No.11 of 2006 has been answered in the negative.

2. I have heard the learned counsel for the litigating sides at length on 9.6.2017 and today. It is apparent from the record that the respondent / management has complied with Section 25-F while discharging the petitioner from service. The law of retrenchment under Section 25-F was, therefore followed and the amount of compensation and other legal dues have been credited to the Bank account of the petitioner.

3. There is no dispute that gratuity was not paid and the

retrenchment compensation was calculated on the basis of ten years' service of the petitioner from 1994 till his retrenchment on 12.4.2004.

4. In another proceedings before the Labour Court in Complaint (ULP) NO.57 of 2001, the Labour Court held in it's judgment dated 30.3.2009 that the petitioner was working with the respondent from 28.8.1988 and had put in continuous service. The said judgment was subsequently set aside by the Industrial Court only on the ground of jurisdiction as the Labour Court concluded that the four days' suspension amounts to temporary dismissal. The Industrial Court, therefore, has rightly set aside the judgment. Shri Barde submits that the date of joining in August 1988 has been accepted. Shri Patil submits that unfortunately, the respondent is unable to trace out it's old record of 1998 and the establishment at Ahmednagar has been closed down.

5. I find that before the Labour Court in Complaint (ULP) No. 57 of 2001, there was no dispute about the date of joining of the petitioner.

6. The claim of the petitioner for seeking VRS amounts which was extended to other employees, cannot be accepted as the petitioner was removed from service on 12.4.2004 and that has nothing to do with the VRS amounts. If he was also extended the VRS, the claim for similar VRS payments could have been entertained.

7. Shri Patil has graciously stated that even the respondent desires that this litigation should be brought to an end, as a very short issue is involved. Shri Barde submits that the confusion regarding his joining on 28.8.1988 could be kept aside and as a gesture for bringing the litigation to an end, he is agreeable on instructions that the joining date could be rounded off to 1990. This is acceptable to the respondent.

8. The last paid monthly wages of the petitioner was at the rate of Rs.4,000/-. His gratuity will, therefore, have to be calculated on the basis of the same for a period of 14 years, which is about Rs. 32,300/-. His retrenchment compensation for the period of 4 years will also have to be computed, which is about Rs. 9,000/- only. The total unpaid dues would be about Rs.41,500/-.

9. Considering the effect of Section 7(3A) of the Payment of Gratuity Act, 1972, as the gratuity was not paid after one month of the severing of the employee - employer relationship, the gratuity amount would attract interest. As such, with the consent parties, the entire unpaid amounts are rounded off to Rs.50,000/-.

10. This petition is therefore, partly allowed only to the extent of the payment of legal dues of Rs.50,000/-, which the respondent would pay to the petitioner within a period of eight weeks by depositing the amount before the II Labour Court, Ahmednagar.

11. The petitioner would be at liberty to withdraw the said amount by making an application, accompanied by a recent photograph, recent address proof, copy of his Savings Account pass book held in any Bank and copy of the Election Commission's Voter ID card and due verification by the Advocate.

(RAVINDRA V. GHUGE, J.)

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