

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

BENCH AT AURANGABAD.

**LETTERS PATENT APPEAL NO.2 OF 2004.
IN
CIVIL APPLICATION NO.5 OF 2004
IN
WRIT PETITION NO.2870 OF 2003**

The Chief Executive Officer,
Zilla Parishad, Ahmednagar. ... Appellant.

Versus

Miya Amir Shaikh. ... Respondent.

...
Mr.S.T.Shelke, advocate for the Appellant.
Mr.D.R.Jayabhar, advocate for Respondent absent.
...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 09.10.2017.

PER COURT :

1. Reference was made to the Labour Court under sub-section (1) of Section 10 read with sub-section (5) of Section 12 of the Industrial Disputes Act. The Respondent contended that he was engaged with the appellant since 1994. In

1978, he was transferred as a driver. Till 30.9.1980, he was continuously in service and was getting Rs.26/- per day as his wages. His services were terminated with effect from 1.6.1988. There was non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Industrial Court partly allowed the Reference, directed reinstatement of the present Respondent with continuity from 1.10.1988, however, without back wages. The present appellant assailed the said order by filing the Writ Petition bearing W.P.No.2870/2003. The said Writ Petition was dismissed under order dated 14.11.2003. Aggrieved thereby, the present appeal.

2. Learned counsel submits that the appointment of the Respondent was on daily wages. The termination would fall under Section 2(oo) (bb) of the Industrial Disputes Act. According to the learned counsel, even after the order was passed by the Industrial Court, the Respondent did not join the services of the appellant. The Respondent till his dismissal had only worked total 184 days in the year 1987-88. Even if

public holidays are considered, that would not be considered as 240 days. He was engaged on daily wages as and when work was available.

3. The finding that the Respondent had worked for 240 days is not a conclusive finding but the Labour Court has observed that it appears that the present Respondent has completed 240 days including public holidays, national holidays and weekly off. No such evidence is produced on record, whereas in the preceding year as per the chart produced by the appellant, the Respondent has worked for 184 days.

4. Be that as it may, learned counsel on instructions states that after the order was passed by the Industrial Court, the Respondent never joined the services of the present appellant. On that count also the Respondent would not be entitled for any relief as since 1988, the Respondent is not in service with the appellant and even after the order of the Labour Court dated 8.5.2002, the Respondent has not joined the services.

5. Considering above, the appeal is allowed. The judgments assailed are set aside.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

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