

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6296 OF 2005

The State of Maharashtra.
Through Executive Engineer,
Ghatghar Pumped Hydroelectric Project,
Division No.1, Bhandardara,
Taluka Akole, District Ahmednagar.

....PETITIONER

-VERSUS-

Kisan Maruti Katde,
Age : Adult, Occupation : Nil,
R/o Guhire, Post Shendi,
Taluka Akole,
District Ahmednagar.

....RESPONDENT

WITH
WRIT PETITION NO.6297 OF 2005

The State of Maharashtra.
Through Executive Engineer,
Ghatghar Pumped Hydroelectric Project,
Division No.1, Bhandardara,
Taluka Akole, District Ahmednagar.

....PETITIONER

-VERSUS-

Daulat Dashrath Pawar,
Age : Adult, Occupation : Nil,
R/o Guhire, Post Shendi,
Taluka Akole,
District Ahmednagar.

....RESPONDENT

WITH
WRIT PETITION NO. 6298 OF 2005

The State of Maharashtra.
Through Executive Engineer,

Ghatghar Pumped Hydroelectric Project,
Division No.1, Bhandardara,
Taluka Akole, District Ahmednagar.

....PETITIONER

-VERSUS-

Shravan Santu Tatile,
Age : Adult, Occupation : Nil,
R/o Guhire, Post Shendi,
Taluka Akole,
District Ahmednagar.

....RESPONDENT

**WITH
WRIT PETITION NO. 6299 OF 2005**

The State of Maharashtra.
Through Executive Engineer,
Ghatghar Pumped Hydroelectric Project,
Division No.1, Bhandardara,
Taluka Akole, District Ahmednagar.

....PETITIONER

-VERSUS-

Shravan Budha Sonawane,
Age : Adult, Occupation : Nil,
R/o Guhire, Post Shendi,
Taluka Akole,
District Ahmednagar.

....RESPONDENT

...

AGP for the Petitioners/ State : Shri N.T. Bhagat.
Advocate for the Respondents : Shri S.T. Shelke.

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CORAM : RAVINDRA V. GHUGE, J.
DATE : 25.09.2017

ORAL JUDGMENT:

1. In all these matters, the petitioner /State is aggrieved by the

judgment and award dated 12.04.2005 delivered by the Second Labour Court, Ahmednagar, thereby allowing References (I.D.A.) Nos.3, 4, 5 & 6 of 2002 filed by the respective respondents /workmen and they are granted reinstatement in service on the same terms and conditions with continuity of service from 21.10.2000, without back-wages.

2. By order dated 01.09.2005, this court has granted interim relief in terms of prayer clause-C, thereby staying the judgment and award of the Labour Court. Consequently, all these respondents/workmen are out of employment. There is no dispute that the applications for benefits under Section 17-B of the Industrial Disputes Act, 1947 have not been filed in these matters.

3. The learned AGP has strenuously criticized the impugned awards and my attention is drawn to the 15 grounds formulated by the petitioner in the memo of the petitions.

4. It is vehemently contended that all these respondents were on daily wages. None of them have completed 240 days in continuous service. As such, there is no requirement for the compliance of Section 25-F of the Industrial Disputes Act, 1947. Since they were daily wagers, there is no question of any seniority or application of the principle of "Last Come – First Go". It is also contended that Section 2(oo)(bb) of the Industrial Disputes Act, 1947 would be applicable as it was a contract for service between the parties and there was no renewal of contract.

5. The learned Advocate for the respondents /workmen has

strenuously defended the impugned awards. He submits that the Labour Court has concluded that these workers have worked continuously from 01.01.1983 and have, therefore, worked for three years continuously. When such a finding on facts is arrived at, this Court should be slow in interfering with such conclusions in its supervisory jurisdiction.

6. It is further contended that the Labour Court has granted reinstatement to these respondents on the same terms and conditions on which they were earlier appointed. No interference is called for when the Labour Court has not granted the Respondents beyond what is permissible in law while entertaining their case.

7. I have considered the submissions of the learned Advocates and have gone through the impugned award and the record available.

8. It is apparent that the petitioners have not come forth with the case that the respondents were working on Employment Guarantee Scheme. This ground is not raised in these proceedings.

9. I find from the answer to Issue No.1 that the Labour Court has concluded that the record reveals the continuous service from 01.01.1983. The alleged termination is dated 20.01.1986. The Labour Court has framed Issue No.4 as to whether, the workman has proved completion of 240 days in the calendar year preceding the date of reference, which is the date of termination. The Labour Court has assigned reasons, while holding in the negative, that the documents on record indicate that the respondents have not completed 240 days in

continuous service in the year preceding the date of termination. On this count, Section 25-F would not be attracted keeping in view the effect of Section 25-B of the Industrial Disputes Act, 1947.

10. There is no dispute that after the termination of all these respondents, they are not in employment for the last 31 years. If the conclusions of the Labour Court are to be accepted to the extent of its answer to Issue No.4, it would be established that these respondents were working for two years continuously and in the third year preceding the date of termination, they have not completed 240 days. As such, the termination cannot be said to be unlawful.

11. Nevertheless, in matters of similar nature, in the cases of

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, **[2013 LLR 1009]**;
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, **[(2013) 5 SCC 136]**;
- (c) *BSNL Vs. Man Singh*, **[(2012) 1 SCC 558]**; and
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, **[(2009) 15 SCC 327]**,

the Honourable Supreme Court has concluded that after an employee has worked for a short duration and is out of employment for a long duration of 15, 20 or 30 years, an order of reinstatement would be impracticable. A pragmatic view has to be taken. The Honourable Supreme Court has, therefore, granted compensation in between

Rs.30,000/- to 40,000/- per year of service put in by the concerned worker.

12. Keeping in view, that the respondents/workmen in these cases have worked for two years from 1983 to 1985, ends of justice would be met by awarding compensation of Rs.80,000/- to each of the workmen.

13. These Writ Petitions are, therefore, partly allowed. The impugned awards are modified by setting aside the order of reinstatement and continuity in service and instead, the respondents/workmen would be entitled to a lump-sum compensation of Rs.80,000/- (Rupees Eighty Thousand) each for having worked about two years in service.

14. The petitioner/ State shall, therefore, pay the said compensation to the respondents within a period of TEN WEEKS from today, failing which the Executive Engineer, Ghatghar Pumped Hydroelectric Project, Division No.1, Bhandardara, Taluka Akole, District Ahmednagar, shall be liable to pay interest @ 6% p.a. from the date of the award, on the amount of Rs.80,000/-, from his own salary and the said component of interest shall not be paid from the State exchequer.

15. Rule is made partly absolute accordingly.