

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

WRIT PETITION NO. 6075 OF 2014

The Deputy Conservator of Forest,
Vanbhavan Nagar, Aurangabad Road,
Ahmednagar.

...PETITIONER

-VERSUS-

Shankar Sopan Barate,
Age : 35 years, Occupation : Nil,
R/o Rakshaswadi Burdrukh,
Post Baradgaon, Taluka Karjat,
District Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO.6120 OF 2014**

1 The Deputy Conservator of Forest,
Aurangabad Forest Division,
Osmanpura, Aurangabad,
District Aurangabad.

2 The Ranger Forest Officer,
Range Forest Office, Sillod,
Tq.Sillod, District Aurangabad.

...PETITIONERS

-VERSUS-

Ramdas Bhavrao Divate,
Age : Major, Occupation : Nil,
R/o Dhavada, Post : Amthana,
Tq.Sillod, District Aurangabad.

...RESPONDENT

...

Shri A.N.Gaddime, Special Counsel a/w Shri S.P.Tiwari, AGP, for the
Petitioner.

Advocate for Respondent in WP 6075/2014 : Shri Barde Parag Vijay.

Advocate for Respondent in WP 6120/2014 : Shri A.S.Shelke.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd February, 2017

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 On 11.01.2017, I had passed the following order in these
matters:-

- "1. The Labour and the Industrial Courts have concluded that the petitioner has failed to establish that the respondent was working on Employment Guarantee Scheme as no evidence was brought on record in support of the petitioner's contention.
2. The issue as to the petitioner not being an "Industry" under Section 2(j) of the I.D.Act, was raised before the Labour Court.
3. It is informed that the Hon'ble Apex Court, by order dated 03/01/2017, has referred the issue of "INDUSTRY UNDER SECTION 2(j) OF THE I.D.ACT" to a Larger Bench comprising of 9 judges of the Hon'ble Supreme Court. Mr.Barde seeks time to produce a copy of the same.
4. Stand over to 31/01/2017."

3 I have heard the learned Advocates for the respective sides and have gone through the record available and also considered the bunch of documents (about 180 pages) tendered across the Bar by the Petitioner.

4 In the first Writ Petition No.6075/2014, the Petitioner claimed to be working from 1992 till 2007 on daily wages. In his Complaint (ULP) No.18/2007, it is stated that he had earlier joined on 16.08.1989 and was terminated on 14.03.1996. He preferred Complaint (ULP) No.40/1996 wherein the Labour Court passed an interim order dated 24.06.1996. He was reinstated in service. Complaint (ULP) No.40/1996 was subsequently allowed. On 16.04.2007, he was again terminated. This indicates that the first Respondent, namely, Shankar Barate had worked with the Petitioner from 1989 till 2007.

5 In the second Writ Petition, the Respondent/ Ramdas Bhavrao Divate had worked from 15.08.1994 till 24.08.1999, which is a period of about five years. He is not in employment for the last about 18 years.

6 In the first Writ Petition, it is evident from the impugned judgment dated 02.05.2013 delivered by the Industrial Court and the judgment of the Labour Court dated 06.08.2011 that the Petitioner did not lead oral and documentary evidence. The documents from the bunch (180

pages) tendered before the Court across the Bar were neither exhibited nor proved before the Labour Court. In short, they have not been tested in accordance with the Evidence Act. Consequentially, the Labour Court concluded that besides making a bald statement in the Say/ Written Statement that the worker was working on Employment Guarantee Scheme (EGS), no evidence was produced. In this backdrop, the Labour Court as well as the Industrial Court concluded that the oral termination of the Respondent Shankar Barate dated 16.04.2007 was bad in law. He was granted 25% back wages which has been sustained by the Industrial Court. Considering the law laid down by the Honourable Supreme Court in the matter of *Gauri Shankar vs. State of Rajasthan*, **2015 (2) CLR 497**, I do not find that grant of 25% back wages could be held to be unsustainable or exorbitant. The first Writ Petition No.6075/2014 being devoid of merit is, therefore, dismissed. Rule is discharged.

7 Insofar as the second Writ Petition concerning Ramdas Divate is concerned, the situation is no different. In the reference proceedings, the Petitioner examined the Range Forest Officer of Sillod, who admitted that Ramdas Divate was working from 1994 till 2000 on Employment Guarantee Scheme. The entire muster rolls from 1994 till 2000 were not produced before the Labour Court, except some skeletal portions of the muster rolls were placed on record at Exhibits C-21 to C-26, which could

be about five pages.

8 The Labour Court, therefore, concluded that though the witness of the Petitioner admits that Ramdas Divate was working for about six years, it did not produce the muster rolls from May, 1994 till December, 1995, July to September, 1996, April to November, 1997 and August, 1998 to April 2000 before the Labour Court. Considering that the Petitioner was holding back certain documents, the Labour Court concluded that the only reason for not producing such documents could be that they would not indicate that the Respondent/ Employee was working on EGS and would support the contention of the Employee that he was working on different schemes of the Department. In this view of the matter, I do not find that the judgment of the Labour Court could be termed as being perverse or erroneous.

9 However, it cannot be ignored that the Respondent was working from 1994 till 2000 and is out of employment for the last about 17 years. The Honourable Supreme Court in the following four cases has concluded that where a short tenure of employment is followed by a long duration of unemployment, grant of compensation instead of reinstatement in service, would be more practicable:-

(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].

10 The Honourable Supreme Court has held that compensation of about Rs.30,000/- per year of service put in by the employee, would be reasonable and practicable. Considering the same, I am granting compensation of Rs.1,80,000/- to the Respondent (Ramdas Divate) by partly allowing the second petition.

11 As such, the second Writ Petition No.6120/2014 is partly allowed. The impugned award of the Labour Court dated 04.07.2013 is modified with the direction that the Petitioner shall pay the quantified compensation of Rs.1.80 lac to the Respondent (Ramdas Divate). The Respondent shall not be entitled for any other claims of any nature whatsoever against the Petitioner, keeping in view that the lump-sum compensation is being granted to him.

12 The said amount of compensation shall be paid to the Respondent within a period of TWELVE WEEKS from today, failing which the Deputy Conservator of Forest, Aurangabad Division, Aurangabad shall be liable to pay interest at the rate of 6% per annum on the said amount from the date of the impugned award till the actual payment, from his own salary. The said amount of interest shall not be paid from the State Exchequer.

13 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)