

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

WRIT PETITION NO. 10686 OF 2016

Narhari Madhavrao Jiddewar,
R/o 12, Somnath Laundry,
Gavthan, Kedgaon Devi,
Ahmednagar.

...PETITIONER

-VERSUS-

Kinetic Engineering Limited,
Nagar Duand Road,
Ahmednagar.

...RESPONDENT

...

Advocate for Petitioner : Shri Tarde Vivek V.

Advocate for Respondent : Shri Bedre Vinayak Sudhakar.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th February, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard the learned
Advocates by consent, finally.

2 While issuing notice, I had passed the following order on
06.12.2016:-

1. *The petitioner is aggrieved by the judgment of the
Industrial Court dated 13.4.1996, by which,*

Complaint (ULP) No.72 of 2010, filed by the petitioner seeking benefits incidental to permanency has been rejected.

2. *The petitioner was earlier terminated by order dated 18.10.1984 by the respondent. Reference (IDA) No.2 of 1988 was allowed on 18.8.1995 and the petitioner was granted reinstatement but without continuity and without backwages. Under orders of this Court dated 15.7.1998 in Writ Petition No.5646 of 1996, the petitioner was reinstated on 15.7.1998. He superannuated on 16.10.2015. Yet, the Industrial Court has concluded in paragraph No.16 that as the petitioner has been continued on temporary basis and he has not been declared permanent by a competent Court, he is not entitled to benefits of permanency.*
3. *By judgment dated 23.8.2016, this Court has disposed off Writ Petition No.5646 of 1996 and has sustained the judgment of the Labour Court.*
4. *I find that the case of the petitioner is squarely covered by Standing Order 4C and 4D of the Industrial Employment Standing Orders Act, 1946. Prima facie, he cannot be deprived of permanency and benefits incidental thereto.*
5. *Issue notice before admission to the respondent returnable on 13.1.2017.*
6. *The parties shall note that this matter is likely to be heard finally at admission stage.”*

3 There is no dispute that the Petitioner herein was granted reinstatement without continuity and without back wages by the Labour Court by its judgment dated 18.08.1995. The Petitioner/ Workman had approached this Court in Writ Petition No.435/1996 praying for continuity and full back wages. The said Writ Petition was dismissed by this Court on 18.01.1996. The Petitioner was granted a fresh appointment on 15.07.1998. By order of this Court dated 23.08.2016, Writ Petition

No.5646/1996 filed by the Respondent/ Management challenging the same award of the Labour Court dated 18.08.1995, was disposed of and Rule was discharged.

4 The Petitioner had approached the Industrial Court in Complaint (ULP) No.72/2010 praying for the benefits of employment from the date of the award of the Labour Court which is 18.08.1995 and considering the effect of Standing Orders 4-C and 4-D of the Model Standing Orders, there should be parity in wages in comparison to the comparable workers on the basis of the principle of “equal pay for equal work”.

5 By the impugned judgment, the Industrial Court has dismissed the complaint purely on the ground that the Petitioner was continued on temporary basis and he cannot claim permanency unless he has been declared permanent by the competent Court. It was further observed that the Complainant cannot take undue benefit of the petition being dismissed in default, to get wages on par with permanent employees.

6 Shri Bedre, learned Advocate for the Respondent/ Management, has strenuously supported the impugned judgment and has

canvassed that as the Petitioner was reinstated on 15.07.1998 as a fresh employee, he was rightly continued as temporary and he has no legal right to claim permanency.

7 I find that the Industrial Court has completely misdirected itself. It has failed to consider the effect of Standing Orders 4-C and 4-D of the Model Standing Orders r/w Item (9) of Schedule IV of the MRTU & PULP Act, 1971. The Respondent, unquestionably and undisputedly, is a private industry. The Rules applicable to the State Instrumentalities to the extent of creation of posts by the State Government, are not applicable to the private industries. The Model Standing Orders are undisputedly applicable to the Respondent. The effect of Standing Orders 4-C and 4-D would, therefore, rightly bestow the deemed status of permanency on the Petitioner. This aspect has been completely lost sight of by the Industrial Court.

8 The Labour Court delivered its award dated 18.08.1995 directing that the Petitioner should be reinstated in service without continuity and without back wages. It, therefore, means that the Petitioner was to be reinstated not in continuity, but was to be appointed as a fresh candidate. The challenge to the said award has been put to rest by this Court in the petitions filed by the Petitioner as well as the Respondent/

Management. The Petitioner was, therefore, entitled to be reinstated on 18.08.1995. Per contra, he has been reinstated on 15.07.1998.

9 In the light of the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 30.04.2016 is quashed and set aside and Complaint (ULP) No.72/2010 is remitted to the Industrial Court at Ahmednagar with the following directions:-

- (a) Both the litigating sides shall appear before the Industrial Court on 24.03.2017. Formal notices need not be issued.
- (b) The Industrial Court shall decide the Complaint afresh by permitting the litigating sides to lead oral and documentary evidence, if so desired.
- (c) The Petitioner shall be deemed to be reinstated in service on 18.08.1995 as a fresh candidate and would be entitled for minimum rates of wages applicable to the Engineering Industry as prescribed in the Schedule of the Minimum Wages Act.
- (d) The Industrial Court shall consider the complaint only for the purpose of calculations of legal dues payable to the Petitioner keeping in view that after completion of 240 days from 18.08.1995, the Petitioner would be deemed permanent under Standing Orders 4-C and 4-D.

- (e) While calculating the said wages for the period 18.08.1995 to 15.07.1998 and thereafter, till the superannuation of the Petitioner, the Industrial Court shall consider the salaries being paid to the identically situated employees, who can be said to have joined the service in 1995-1996 and at par with such comparable employees.
- (f) The Petitioner as well as the Respondent would be obliged to bring before the Industrial Court, appropriate evidence in order to enable the Industrial Court to consider the comparative wages being paid to the comparable employees, who are permanent in service.
- (g) Considering that the Petitioner has superannuated on 16.06.2015, the Industrial Court shall endeavour to decide the said complaint as expeditiously as possible and preferably on or before 31.03.2018.

10 Rule is made partly absolute in the above terms.