

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

LETTER PATENT APPEAL NO. 176 OF 2012

IN

WRIT PETITION NO. 11726 OF 2010

Vijay Giris/o Kishor Giri,
Age 45 years, Occ: Nil,
R/o. C/o. Shri C.N. Shinde,
Chief Secretary, Trade Union Centre,
Jalkot road, At post: Udgir,
Tq. Udgir, District Latur.

... APPELLANT

Versus

1. Marathwada Agril. University,
Parbhani, through its Registrar.
2. Assistant Cotton Research Officer,
Somnathpur, Dist. Latur.

... RESPONDENTS

...

Advocate for Appellant : Mr. Yenge Balaji B.

Advocate for Respondents : Mr. Sakolkar Vijay G. Adv For R/1

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**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 03.07.2017.

ORAL JUDGMENT :-

. We have heard both sides. We have perused the entire record. Admit. Respondents waive service. By consent, heard forthwith.

2. The appellant is aggrieved and dissatisfied with the judgment

and order of the learned Single Judge allowing the writ petition of the employer first respondent to this appeal and setting aside the award of the Labour Court.

3. The award dated 17.07.2010 of the Presiding Officer, Labour Court, Latur in Reference I.D.A. no. 7 of 2005 directed that the Marathwada Agricultural University and the Assistant Cotton Research Center should reinstate the appellant in the services with continuity and full back wages.

4. Aggrieved and dissatisfied with this award, the original respondents Marathwada Agricultural University and another filed writ petition no. 11726 of 2010. By the impugned order dated 21.07.2011, that writ petition was allowed and the award of the Presiding Officer, Labour Court in Reference I.D.A. No. 7 of 2005 was set aside.

5. Aggrieved thereby, the employee is before us.

6. We have perused the statement of claim, the written statement of the university, and the oral and documentary evidence placed before the Presiding officer of the Labour Court.

7. Beyond a suggestion in the cross-examination of the

appellant-employee the original opponents/respondent before us could not falsify his version. The chart that was produced before the concerned Presiding Officer and was exhibited by consent reveals that compliance is made with requirement set out by Section 25-F of the Industrial Disputes Act, 1947. The appellant claims that he was working as a daily wager from 01.01.1984. He completed his duty effectively and promptly. There was never any misconduct on his part. An oral termination order was issued on 01.07.1994. There has been no notice, no inquiry, nor any compensation. Hence such an order is illegal.

8. The learned Presiding Officer has found from the record namely the written statement and the documents that one of the defence of the respondents and particularly the Agricultural University was that the appellant before us was working as a temporary employee for contingent seasonal work against no vacant permanent post. Secondly, this appointment was not made by inviting any applications or any proposals from the employment exchange. There was no interview nor was any regular appointment order issued. At the same time, it was urged that the appellant left the service on his own with effect from 07.07.1993 and since then he is not in employment. There is a denial that such an oral order of termination was issued. In any event, he has

not completed more than 240 days of service in a year.

9. It is such a defence which has been disbelieved and by assigning, with greatest respect cogent and satisfactory reasons. The appreciation of evidence from paragraph no.6 of the order of the Presiding Officer until the reference therein to the exhibit-CA / chart reveals, according to the learned Judge, that the appellant before us has worked continuously from the time he was employed. If it was the case of the respondent-university that there is an abandonment of service and he has never reported for work from July 1993 then the burden was squarely on the university to prove such an assertion. That burden is not discharged. As far as the chart is concerned, it has not been disputed. The services were terminated with effect from 01.07.1994. The number of working days year wise for which the employee/workmen worked has been set out in the chart. He has worked for more than 240 days except in the year 1989. It is in these circumstances and when he was allowed to work only till July 1993, then, for the deficit, the Presiding officer opined that the workmen's version cannot be disbelieved. He cannot be called upon to prove the negative. He has discharged the burden and the case of the employee that he has worked is proved but it was the case of the employer/university that he had not so worked. It also relied on this

very chart. Thus, the version of the university was falsified by its own documents.

10. Such an award of the Labour Court, with greatest respect should not have been interfered with by the learned Single Judge. This was not a permissible course and in writ jurisdiction. If there is no perversity or error of law apparent on the face of record, then, it is not permissible to interfere in writ jurisdiction. In writ jurisdiction it is not permissible to reappraise and re-appreciate the same factual materials merely to record a different opinion. Once the opinion of the learned trial Judge was not suffering from such serious legal infirmities as would enable this Court to interfere in writ jurisdiction, then, we agree with Mr. Yenge that the impugned order and passed by the learned Single Judge is illegal and deserves to be set aside.

11. Mr. Sakolkar appearing on behalf of the university tried to persuade us in not interfering with the order of the learned Single Judge. His argument was that the appellant has not worked and for the period mandated by the statute. Hence, the termination cannot be said to be illegal. We are unable to agree. The learned Single Judge in para 11 of the impugned order has, with greatest respect, recorded an inconsistent

and contradictory finding. He first comes to the conclusion that the Labour Courts award and containing the above finding namely of completion of 240 days of service in the preceding year is recorded without any basis. With respect, there is no reference to the reasoning of the learned Presiding Officer of the Labour Court nor the record. The learned Single Judge, then refers to the point of delay. We do not see that question to be germane and relevant. If it was the case of the employee/workmen that his services were terminated in 1994 nothing prevented him, according to the learned Single Judge, from challenging alleged oral termination till 2004. It is only in the year 2004 such reference was filed which is after ten years from the alleged oral termination. Pertinently, this plea was raised by the first respondent before us casually and it miserably failed to prove its case of the Appellant abandoning the service. With greatest respect, this issue may have some bearing on the ultimate relief to be granted but certainly not on the legality of the termination. It could be that the employee/workmen is dis-entitled from claiming the relief of reinstatement in service with continuity and full back wages, however, bearing in mind that the legality of termination was the prime issue and there a factual finding was rendered in favour of the workmen/employee, then, the learned Judge should have balanced the rights and equities.

Instead of confirming the order of the Presiding Officer in its entirety, suitable modifications could have been effected to it, in the interest of justice.

12. It is this precise course which we intend to follow. We reverse the order of the learned Presiding Officer of the Labour Court only to the extent of the ultimate/final relief. In the process, we set aside the judgment of the learned Single Judge.

13. We direct that since the workmen is now 56 years of age and cannot be reinstated in service of the Agricultural University for various reasons, interest of justice would be served, if the agricultural university/employer is directed to pay a sum of Rupees Four Lakhs as compensation in lieu of reinstatement, continuity of service and full back wages. Thus, on the basis of the compensation amount determined and paid to the appellant before us that would be in full and final settlement of all his claims. Nothing would then survive. We direct such payment be made as expeditiously as possible and within a period of eight weeks from the date of receipt of a copy of this order. Letters Patent Appeal stands allowed and disposed of accordingly.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]