

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5787 OF 2016

Ashok Harichandra Shirsath,
Age 55 Years, Occ. Nil,
r/o Jalod, Taluka Amalner,
District Jalgaon. ..Petitioner

Versus

Jalgaon City Municipal Corporation,
Jalgaon Through its Commissioner,
Jalgaon. ..Respondent

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Advocate for Petitioners : Shri Deshmukh Anand
Advocate for Respondent : Smt. Kutti-Choudhary Chaitali
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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 24, 2017
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment and award dated 1.9.2009 by which, the Labour Court, Jalgaon has

answered Reference (IDA) No.25 of 2004 in the negative.

5. There is no dispute that the Labour Court has concluded that the petitioner has completed 240 days in continuous service with the respondent from 1.4.1988 till 1.4.1991. It is equally undisputed that the respondent has not challenged the conclusions of the Labour Court that he has worked continuously for three years.

6. It is trite law that the onus and burden of proving completion of 240 days in continuous employment lies on the shoulders of the workman. However, I am not required to go into this aspect, as the conclusion of the Labour Court based on an adverse inference drawn due to non-production of documents by the respondent, has not been challenged by the respondent in this Court.

7. It is equally settled that in an employment with 'State Instrumentalities', mere completion of 240 days in continuous employment would not entitle the claimant to reinstatement in service. Nevertheless, the Honourable Apex Court has held in four judgments that if an employee has put in a short tenure in service and is followed by a long spell of unemployment,

granting reinstatement would be impracticable. Compensation at the rate of about Rs.30,000/- per year of service can be granted in lieu of reinstatement claimed by the workman, the law laid down in the following judgments:-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],

3. BSNL Vs. Man Singh [(2012) 1 SCC 558] and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].

8. In the instant case, though the petitioner has claimed that juniors were retained in service and hence there was a violation of Section 25-G of the Industrial Disputes Act, none of the junior employees were examined, inasmuch as no evidence was brought before the Court as regards their dates of appointment, the department in which they were working and the nature of duties performed by them. Merely engaging new persons or retaining juniors cannot per se amount to non-compliance of

Section 25-G. They must be comparable employees and for the said purpose, they must be doing the same nature of work and in the same departments in which, the claimant was working. On this count, the conclusion of the Labour Court that Section 25-G was not violated, appears to be sound and proper.

9. It, however, cannot be ignored that once an employee has established continuous employment for a particular period as is defined under Section 25-B and if the law of retrenchment is not followed as defined under Section 25-F, the said employee needs to be compensated if reinstatement is not possible. In the instant case, after his dis-engagement as a daily wager, from 1.4.1991, the petitioner raised an industrial dispute under Section 2A only in 2004 which is after 13 years. Naturally, it would be inappropriate to direct his reinstatement after having put in 3 years of service and followed by unemployment for a period of almost 26 years. So also, there was no evidence before the Labour Court as to whether the work was available and whether the petitioner could be reinstated on a non-existing post.

10. Considering the law laid down by the Honourable Apex Court in the above referred four cases, the Labour Court could have quantified compensation in lieu of reinstatement. Learned

Advocate for the Respondent has strongly opposed compensation.

11. As such, this petition is partly allowed. The impugned award dated 1.9.2009 is modified and Reference IDA No.25 of 2004 is partly allowed to the extent of granting compensation to the petitioner at the rate of Rs.30,000/- per year of service put in by him. The respondent / Corporation shall, therefore, pay a lump sump compensation of Rs.90,000/- (Rs. Ninety Thousand only/-) to the petitioner within 12 weeks from today, failing which, it would carry interest at the rate of 6% P.A. from the date of the award of the Labour Court.

12. Rule is made partly absolute in the above terms.

13. Learned counsel for the petitioner prays for leave to apply afresh as a temporary employee. This Court cannot make any observation about such an application.

(RAVINDRA V. GHUGE, J.)

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