

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6251 OF 2007
WITH
WRIT PETITION NO. 10149 OF 2015

1. The Executive Engineer,
Water Resources Department,
Opposite CADA Office,
Near Gajanan Maharaj Mandir,
Aurangabad.

2. The Sub-Divisional Officer,
Water Resources,
Sub-Division No.3,
Jangamwadi, Dist. Nanded.

..Petitioners

Versus

Ananda Mahajan Alewad,
Aged major, Occ. Nil
R/o Patoda, Post Barad,
Tq. Biloli, Dist. Nanded.

..Respondent

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AGP for Petitioners : Shri Bhagat N.T.
Advocate for Respondent : Shri Gaikwad Anil M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 16, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule in Writ Petition No.10149 of 2015. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

3. Both these petitions have been filed by the Water Resources Department, Aurangabad. The respondent is the same employee / Ananda.

4. In the first petition, the petitioner / department has challenged the judgment of the Industrial Court dated 24.7.2007, by which, Complaint (ULP) No.149 of 2001 has been allowed and the respondent / Ananda is granted reinstatement and all benefits which he is entitled to as per the terms and conditions of employment, with retrospective effect.

5. This Court, while admitting the petition has directed the petitioner to allow the respondent to work on the same conditions as before. Direction to extend monetary benefits had been stayed. As such, the second petition in which the petitioner has challenged the judgment of the Labour Court, dated 18.12.2013 and the judgment of the Industrial Court dated 6.2.2015, is also admitted. Both these petitions are taken up for final hearing by the consent of the parties.

6. I have heard the learned AGP on behalf of the petitioners and Shri Gaikwad, on behalf of the employee, at length.

7. The undisputed sequence of events can be summarised as

under:-

(a) The respondent was engaged as a Daily Wager on 1.7.1987 to perform the work of manually measuring the rain fall during the rainy season.

(b) On 1.11.1991, he was dis-engaged.

(c) On 12.11.1991, he preferred Complaint (ULP) No. 228 of 1991 before the Labour Court.

(d) On 13.11.1991, his employment was protected and as such, he was reinstated on 15.11.1991.

(e) On 1.8.1998, the respondent proceeded on medical leave, without being sanctioned any leave, till 1.6.1999.

(f) The respondent claims that his attempt to report for duties were rendered futile and he was compelled to file Complaint (ULP) No.149 of 2001 before the Industrial Court.

(g) By order dated 15.2.2002, the Industrial Court allowed his interim application and directed the petitioner to allow him to report for duties.

(h) The respondent claims that his attempt to report for duties was thwarted by the petitioners and in contra-distinction, the petitioners claim that the respondent did not report for duties.

(i) On 24.7.2007, the Industrial Court allowed Complaint (ULP) No.149 of 2001, confirmed its interim order and granted all consequential benefits to the respondent with retrospective effect.

(j) In Writ Petition No.6251 of 2007, this Court directed the reinstatement of the respondent and stayed the direction to grant monetary benefits.

(k) On 18.12.2013, Complaint (ULP) No.228 of 1991 (re-numbered as 1 of 1991, upon transfer to the Labour Court at Nanded), was allowed and the order of termination dated 10.10.1991 was set aside. The respondent was granted continuity without backwages.

(l) By judgment dated 6.2.2015, Revision (ULP) No.9 of 2014, filed by the petitioners and Revision (ULP) No.56 of 2014, filed by the respondent were dismissed.

(m) The petitioners have challenged both the above judgments, whereas, the respondent has not filed any petition for claiming backwages. As such denial of backwages by the Labour Court from the date of termination dated 10.10.1991 till 18.12.2013 (Labour Court's judgment) has been sustained.

8. There is no dispute that the respondent was not in employment from 1.8.1998 till 3.9.2008, when he was reinstated in service. However, by the judgment of the Industrial Court dated 24.7.2007, the respondent was granted reinstatement and monetary benefits with retrospective effect, which are for the period during which he had not worked.

9. The Industrial Court in Complaint (ULP) No.149 of 2001 has granted reinstatement to the respondent by order dated 15.2.2002. All said and done, the respondent was not reinstated in the light of the contradictory stands taken by both the sides. The petitioners submit that he did not report for duties, which does not seem to be probable because the respondent has been constantly litigating against the petitioners. He appears to be desperately in need of employment and it is improbable that he may not have reported for duties after the Industrial Court granted him interim relief on 15.2.2002.

10. In the complaint challenging his termination, the respondent deposed before the Labour Court that he was continuously working with the petitioners. He was given work on daily wages besides the work that he performed during the rainy season. The Sub-Divisional Engineer Shri Suresh Lathkar was examined by the petitioners before the Labour Court at Exhibit C-16. He admitted in cross-examination that besides measuring rain for three months, the respondent was given work on daily wages in the remaining nine months. He admitted that the respondent was working for all the twelve months in between 1998 to 1991. It is admitted that Section 25-F of the Industrial Disputes Act, 1947 was not followed by the petitioner while dispensing with the services of the respondent.

11. It is informed that originally, Complaint (ULP) No.228 of 1991, renumbered as 1 of 1991, was filed by nine workers along with the respondent as all of them were identically placed. The order dated 24.4.2001, issued by the State of Maharashtra, Public Works Department (compilation of 13 pages, along with other documents) is taken on record and marked as Exhibit "X" collectively. Barring the respondent, who was not in employment on 24.4.2001, all other eight persons, along with four other persons, were granted the benefits of the Kalelkar Settlement.

12. As a consequence of Exhibit "X", these eight persons approached the Labour Court and sought deletion from the complaint. The Labour Court by order dated 31.7.2001 allowed the deletion after recording that all these persons have been assured of permanency and hence they did not desire to prosecute the said complaint. They have been accordingly given the benefits of the Kalelkar Settlement. The respondent, on account of his unauthorized absence from 1.8.1991 onwards and due to the reasons set out herein above, was not in employment on 24.4.2001 and hence was left out. By interim order, dated 15.2.2002, he was granted reinstatement on daily wages during the pendency of his Complaint No. 149 of 2001.

13. It is settled law that the Industrial Court cannot direct permanency on a non-existing post or a permanent post which is not vacant, in matters involving "State Instrumentalities" as has been done by the Industrial Court in its judgment dated 24.7.2007 in Complaint (ULP) No.149 of 2001. This Court has settled the law on this count in the matters of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016 (6) Mh.L.J.867], Mukhyadhikari, Nagar Parishad, Tuljapur Vs.Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75] and Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015,

14. Considering the above, the first petition filed by the State

No.6251 of 2007 is partly allowed. The reinstatement of the respondent by interim order dated 15.2.2002 is sustained. However, the declaration of ULP against the petitioner and direction to pay monetary benefits with retrospective effect is quashed and set aside. The respondent shall be deemed to be reinstated on daily wages from 15.2.2002, though he would not be entitled for the backwages till 2.9.2008, as he was actually reinstated on 3.9.2008. There shall be continuity of service from 15.2.2002 till 3.9.2008. Rule, in the said petition, is made partly absolute accordingly.

15. In the second writ petition, the order of reinstatement granted by the Labour Court and sustained by the Industrial Court in the light of the admissions given by the witness of the petitioner and in the light of the admitted position that Section 25-F of the ID Act was not complied with, stands sustained. Since the Labour Court and Industrial Court have denied backwages to the respondent, which he has not challenged before this Court, there would be no backwages for the period 10.10.1991, till 14.11.1991 and from 1.8.1998 till 2.9.2008. There shall, however, be continuity of service for these periods of unemployment. Since the respondent was unauthorizedly absent from 1.8.1998 till 1.6.1999, depriving him of backwages would be a sufficient punishment. The second petition, therefore, stands partly allowed by modifying the judgments of the Labour Court and the Industrial Court in terms of these directions.

16. Needless to state, as similarly situated employees like the respondent, have been granted benefits of the Kalelkar Settlement, the petitioners shall consider his case for such benefits by taking into account his regular working from 1987 till 31.7.1988 and from 15.2.2002 onwards. Rule is made partly absolute, accordingly.

(RAVINDRA V. GHUGE, J.)

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