

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

WRIT PETITION NO. 9512 OF 2012

THE STATE OF MAHARASHTRA.  
-VERSUS-  
SK. KADIR SK. AHMED.

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AGP for the Petitioner/ State : Shri S.K.Tambe.  
Advocate for the Respondent : Shri Shahane Pradeep L. and Shri Parag  
Shahane.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 14<sup>th</sup> December, 2017**

**Per Court:**

1 By this petition, the Petitioner/ State has put forth two prayers as under:-

- (a) Quash and set aside the judgment and order dated 30.11.2011 passed by the Labour Court rejecting Miscellaneous Reference (IDA) No.3/2004 thereby, refusing to recall the ex-parte award dated 27.08.2003, and
- (b) Quash and set aside the ex-parte judgment and award dated 27.08.2003 by which the Labour Court has allowed Reference (IDA) No.156/1991 and granted reinstatement to the Respondent/ worker with continuity of service and full back

wages from 05.04.1990.

2           I have dealt with the first prayer put forth by the Petitioner and by order dated 21.11.2017, I have concluded that this Writ Petition stands dismissed to the extent of the first prayer, which is mentioned above, by placing reliance upon the judgment delivered by this Court (to which I am a party) in the matter of Dnyaneshwar s/o Anantrao Kulkarni vs. The Superintendent Engineer, Public Works Division and others, 2016 (6) ALL MR 35.

3           As such, this Writ Petition survives only to the extent of the ex-parte award dated 27.08.2003 by which, the Respondent/ worker has been granted reinstatement with continuity and full back wages w.e.f. 05.04.1990.

4           It is not in dispute that the Respondent was working as a Watchman on daily wages with the Petitioner Forest Department from 01.03.1989 till 05.04.1990, when he was orally terminated. The evidence adduced by the Respondent through his affidavit at Exhibit U/2 before the Labour Court indicates this aspect. It is also undisputed that, with effect from 05.04.1990 till today, the Respondent is unemployed for a period of 27 years after having worked for only one year.

5           The Honourable Supreme Court has delivered the following judgments :-

- (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].*

6           In the above referred judgments, the Honourable Supreme Court has concluded that when a daily wager has put in a short spell of employment and which is followed by a long duration of unemployment, it would be impracticable and would not be pragmatic to grant reinstatement with continuity. The Honourable Supreme Court, therefore, concluded that the compensation of about Rs.30,000/- or Rs.40,000/- per year of service put in by the employee should be granted in lieu of reinstatement and other consequential benefits.

7           Since the Respondent, in this case, has admittedly worked for one year and is out of employment for 27 years, the law laid down by the Honourable Supreme Court in the above cases would be squarely applicable.

8           In this backdrop, I am not going into the contentions of the

Petitioner as to whether, the Respondent had worked continuously for 240 days in a period of 12 calendar months and more so, for the reason that the Petitioner had not participated in the Labour Court proceedings and the award had to be delivered ex-parte by the Labour Court after the trial over 12 years during which period, the Petitioner never appeared before the Labour Court.

9           Notwithstanding the above, I find certain circumstances on record, which would convince me to enhance the compensation to be paid to the Respondent and which are as under:-

- (a)     The Respondent had litigated for 12 years before the Labour Court by promptly raising an industrial dispute within one year from the date of his oral termination.
- (b)     After the ex-parte award dated 27.08.2003, the Petitioner had moved Miscellaneous Application in 2004 and that was adjudicated upon by judgment dated 30.11.2011. As such, the Respondent was further into litigation for a period of about eight years.
- (c)     Since the ex-parte award was not stayed by a superior court, the Respondent moved Application (IDA) No.196/2004 under Section 33-C(2) of the Industrial Disputes Act, 1947 seeking recovery of unpaid wages pursuant to the ex-parte award. The said proceedings are still pending for the last 13 years.

- (d) The Respondent filed Complaint (ULP) No.40/2004 under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 before the Industrial Court seeking implementation of the ex-parte award dated 27.08.2003, which was allowed again by ex-parte order dated 04.10.2004.
- (e) Despite the above, since the ex-parte award was not implemented and the judgment of the Industrial Court was also not complied with, the Respondent preferred Contempt Petition No.309/2012 before this Court, which has been disposed of on 22.01.2014 due to the pendency of this Writ Petition.

10 In similar circumstances, this Court, in the matter of Municipal Council, Sillod vs. Bhanudas Jayawanta Sonawane, 2014 MCR 437 : 2014 LLR 424, has granted compensation of Rs.1 lac to the employee while remanding the matter back to the Labour Court.

11 I do not find any reason to remand the matter back to the Labour Court since it is an admitted position that the Respondent has worked for one year and was out of employment for 27 years. However, the compensation of Rs.1 lac would be suitable keeping in view that the Respondent is in litigation for practically 26 years.

12 In the light of the above, this Writ Petition is partly allowed.

The impugned award dated 27.08.2003 is modified and in lieu of reinstatement with continuity and back wages, the Petitioner is directed to pay an amount of Rs.1 lac as a lump sum compensation to the Respondent on or before 15.02.2018, failing which, the said amount shall carry interest at the rate of 6% per annum from the date of the ex-parte award dated 27.08.2003 till its actual payment and the component of such interest shall be recovered from the personal salary of the Divisional Forest Officer, Beed.

13           Consequently, Application (IDA) No.196/2004 pending before the Labour Court, Aurangabad shall stand disposed of and the Labour Court shall, accordingly, pass a formal order disposing of the proceedings.

*kps*

**(RAVINDRA V. GHUGE, J.)**