

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3694 OF 2016

Pathardi Nagar Palika Pathardi,
Through its Chief Officer,
Nanabhau Vishwanath Mahanwar
Age 48 years, Occ. Service
R/o Quater of Municipal Council,
Pathardi, Dist. Ahmednagar. ..Petitioner

Versus

Rajendra Eknath Sathe
Age 42 years, Occ. Service
R/o Valunj, Tq. Pathardi,
District Ahmednagar. ..Respondent

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Advocate for Petitioner : Shri Naiknavare Ramesh V.
Advocate for Respondent : Shri Barde Parag Vijay
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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 28, 2017
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ORAL JUDGMENT :-

1. Rule.
2. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
3. The petitioner is aggrieved by the judgment of the Labour Court dated 18.2.2015, by which, the Reference (IDA) No.18 of 2011, initiated by the respondent alleging termination from 1.1.1999 has

been allowed and the respondent is granted reinstatement with continuity and 25% backwages.

4. I have heard the learned Advocates for the respective sides at length and with their assistance, I have gone through the petition paper book.

5. There is no dispute in so far as the date of appointment of the respondent from 1.2.1992 is concerned. The issue is that the respondent alleged termination w.e.f. 1.1.1999 and the petitioner claimed that the respondent was not terminated and he has not been reporting for duties.

6. The respondent had preferred Complaint (ULP) No.411 of 1994 before the Industrial Court seeking permanency. By interim orders of the Industrial Court his service was protected. The said Complaint was dismissed in default. He then preferred Misc. (ULP) No.49 of 2001, which was also dismissed.

7. The issue before the Labour Court was as to whether the respondent has been terminated w.e.f. 1.1.1999.

8. It is revealed from the impugned award that the name of the respondent was in a document which was addressed to the Divisional

Commissioner at Nasik indicating that he was in employment till December 1998. The Labour Court, therefore, concluded that he was in employment till 31.12.1998.

9. What was expected of the Labour Court is that it was obliged to scrutinize whether the termination of the respondent had occurred on 1.1.1999. The petitioner has taken a stand that there was no termination. The written statement filed before the Labour Court indicates that a letter was forwarded by the petitioner to the Divisional Commissioner, Nasik, which was not for seeking approval for regularization. He was not terminated. He had purportedly misappropriated some amounts allegedly collected from water tap connection holders and since a complaint was filed with the Pathardi Police Station, he stopped reporting for duties.

10. In the above backdrop, as the stand put forth by the litigating sides practically were “word against word”, it was necessary for the Labour Court to scrutinize whether the contention of the respondent that he was terminated on 1.1.1999 is truthful or not. There is no evidence before the Labour Court to prove that the respondent attempted to report for duties, that he presented himself for duties and that despite offering himself for work, the petitioner / establishment refused to give him work. In fact, the issue that is glaring is as to why did the respondent keep silent for a period of

more than 12 years if he was orally refused employment from 1.1.1999. His continued absence for a period of more than 12 years in the absence of any attempt to join duties and his silence would naturally amount to abandonment of employment. The Industrial dispute raised by the respondent is of 2011 and the order of reference by the Deputy Commissioner, Labour is dated 9.11.2011. This conspicuous silence on the part of the respondent for a period of more than 12 years without moving a single application in this period for reporting for duties, would lead to no other inference that abandonment of employment.

11. Section 25-F read with Section 25-B would become significant only if the employee proves completion of 240 days in continuous employment in 12 calendar months, preceding the date of termination. In the absence of any termination and in the light of the fact that the respondent was silent and was not reporting for duties for more than 12 years, itself would indicate that no termination was established, much less, illegal termination.

12. In the light of the above, the impugned award of the Labour Court which is based on conjectures and surmises, cannot be sustained and is perverse and erroneous.

13. Learned counsel for the respondent strenuously submits that in

the matter of the same Municipal Council Vs. Narayan Lahanu Dinkar - Writ Petition No.8237 of 2016, this Court by order dated 27.1.2017 had granted lump sum compensation. I find that in the said case, there was an admitted oral termination after Narayan had put in about 2 years. He has raised a dispute after about 24 years and the Labour Court had allowed the reference. In the said backdrop, compensation was granted. In the instant case, it is conspicuous that the respondent was missing for more than 12 years, did not report for duties and the petitioner specifically stated in the written statement that he was not reporting for duties to avoid disciplinary action with reference to an alleged act of mis-appropriation. Considering the entire facts and circumstances noted above, I do not find that this Court should grant compensation to the respondent.

14. This petition is, therefore, allowed. The impugned award dated 18.2.2015 is quashed and set aside and Reference (IDA) No.18 of 2011 is answered in the negative.

15. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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