

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

WRIT PETITION NO. 6249 OF 2017

Smt.Nathabai Bhikan Mokase,
Age : 54 years, Occupation : Nil,
R/o Pishor, Tq.Kannad,
District Aurangabad.

...PETITIONER

-VERSUS-

The Deputy Director,
Social Forest Division,
New Osmanpura, Aurangabad,
District Aurangabad.

...RESPONDENT

...
Advocate for Petitioner : Shri Khandelwal Rajesh K.
AGP for Respondent : Shri S.N.Kendre.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the judgment and award dated 27.11.2015 by which Reference (IDA) No.63/1994 filed by the Petitioner has been answered in the negative.

3 Learned Advocate for the Petitioner strenuously submits that

the Petitioner was engaged as a daily-wager in the Nursery at Pishor, Taluka Kannad, District Aurangabad under the Social Forest Range, Kannad from 01.09.1985 and was orally terminated on 23.09.1993. Her last drawn daily wages were at the rate of Rs.12/-.

4 It is further submitted that the Petitioner has continuously worked with the Respondents and has completed 240 days in continuous and uninterrupted service. The oral termination would, therefore, amount to illegal retrenchment and as such, non compliance of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 would render the Petitioner eligible for reinstatement with continuity and full backwages.

5 Learned counsel for the Petitioner has strenuously criticized the impugned award. He has taken me through the record available and the eleven grounds formulated by him in the memo of the petition.

6 Learned AGP points out that the Petitioner was working on Employment Guarantee Scheme (EGS). Even when the Industrial Dispute was raised by the Petitioner, the Respondent had appeared in the conciliation proceedings and had pointed out that the Petitioner was working on EGS. The appropriate Government should not have referred the dispute to the Labour Court as the employees working on EGS can neither claim continued service, nor can they seek regularization.

7 I have considered the submissions of the learned Advocates.

8 When the Petitioner had raised an industrial dispute alleging

unlawful termination w.e.f. 23.09.1993, the Plantation Officer of the Respondent had appeared before the Conciliation Officer and submitted that the Petitioner was working on EGS. The plantation nursery on the land of the concerned Gram Panchayat was being developed. As there was shortage of water, the possession of the land was taken back by the Gram Panchayat and the work ended. After closing of the nursery, as no work was available, the Petitioner did not turn up and instead approached the Conciliation Officer under the Industrial Disputes Act, 1947.

9 After the industrial dispute was referred to the Labour Court, the Respondent filed it's Written Statement and had produced the records before the Labour Court which were marked as Exhibits C-10 and C-11.

10 It appears from the records before the Labour Court that the documents at Exhibits C-10 and C-11 were maintained by the EGS Authorities. The Petitioner was being allotted the work on EGS. The initial onus and burden to prove completion of 240 days in continuous employment and that the Petitioner was not working on EGS, but was in regular employment of the Respondent, lies on the Petitioner. It is not in dispute that the Petitioner has not produced any document before the Labour Court, except her statement by way of an affidavit in lieu of her Examination-in-Chief. A notice for production of documents was also not filed.

11 Two persons, namely, Pandurang Mokase and Nemichand

Tarachand Chavhan, who are alleged to have been regularized in service, were not working on EGS as like the Petitioner. They were working on the Regular Muster Roll on daily wages. Gradually, after their turn came, they were regularized in employment. In these circumstances, the Petitioner cannot be equated with these two persons.

12 This Court, in the matter of Arvind G. Chaudhari and another. vs. Dhanraj Nathu Patil, 2008(6) Mh.L.J. 746, has concluded that the workers working on EGS cannot put forth the claims under the Industrial Disputes Act, 1947 or the MRTU & PULP Act, 1971 for claiming service benefits or continued employment.

13 In the fact situation as above, I do not find that the impugned judgment and award could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

14 Shri Khandelwal, learned Advocate, submits on instructions that the Petitioner is willing to work even today on EGS if the work is available. Considering this statement, the learned AGP on behalf of the Respondent/ Department may consider the availability of work on EGS and if possible, may allot the work to the Petitioner on EGS.