

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 801 OF 2002

Deputy Director of Social Forestry Division,
Raigad at Alibag

...Petitioner

Versus

Smt. Nagarbai Madhav Gaikwad
since deceased through L.Rs.

Shri Madhav Jaywant Gaikwad & Ors.

..Respondents

....

Ms. M.S. Bane, B Panel Counsel for the Petitioner.

Ms.Sujata Ghaisas i/b. I.R. Kulkarni, Advocate for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 21st JUNE, 2017

JUDGMENT:

1. Heard Ms.M.S. Bane, learned A.G.P. for the petitioner and Ms.Sujata Ghaisas, learned counsel for the respondents, at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'first party' has challenged the judgment and award dated 13.10.2000 passed by the learned Judge, 4th Labour Court, Thane in Reference (I.D.A.) No.21/1998. By that order, the Labour Court answered the Reference partly in affirmative and set aside oral

termination of Negarbai Madhav Gaikwad (since deceased), hereinafter referred to as 'second party' w.e.f. 1.6.1991. First party was directed to reinstate the second party in its employment with continuity of service and to pay back-wages from 12.7.1997 till she is reinstated in service.

3. In support of this Petition, Ms. Bane submitted that the second party was working only daily wages basis since 1982 in Social Forestry Department. She submitted that the casual labourers are engaged for contrition land for sowing plants in nursery and distribute free for replantation at Government vacant land such as Gayran which are reserved around the villages or private lands covered by the private owners. First party engages such labourers on daily wages and on purely temporary basis when need is required to do such work. She submitted that the work is covered by Government Rozgar Hami Yojna, Jawahar Rojgar Yojna. The workers under such schemes cannot claim regularization. In the present case, merely because second party had put in more than 240 days service in a year, she cannot claim regularization.

4. Ms. Bane further submitted that said schemes cannot be

treated as Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (for short, 'Act'). She also submitted that the first party did not terminate the services of the second party. On the other hand, the second party on her volition stopped reporting on duty from 1.6.1991. Ms. Bane relied upon following decisions:

- (i) ***Municipal Council, Tirora and another v. Tulsidas Baliram Bindhade, 2016(6) Mh.L.J. 867***, to contend that mere completion of 240 days of service by itself will not enable the second party to claim permanency.
- (ii) ***Executive Engineer ZP, Engg. Divn. v. Digambara Rao Etc., 2004(8) SCC 262***, to contend that the second party was not appointed in accordance with the Service Rules, merely because of completion of 240 days in a year by itself is no ground for directing regularization of her services.
- (iii) ***Delhi Dev. Hort. Employees Union v. Delhi Adm., AIR 1992 SC 789***, to contend that the persons employed under the scheme cannot claim regularization merely because they have put in more than 240 days service.
- (iv) ***Maharashtra State Co-operative Growers Marketing Federation Ltd. and another v. Maharashtra State, AIR 1994 SC 1046***, to contend that the seasonal employees putting more than 240 days of service not entitled to be

regularized.

- (v) ***State of Rajasthan and others v. Rameswar Lal Gahlot, AIR 1996 SC 1001*** to contend that appointment for a fixed period is covered by Section 2(oo)(bb) of the Act and termination is not retrenchment and not illegal unless it is malafide.
- (vi) ***State of Himachal Pradesh v. Suresh Kumar Verma and others, AIR 1996 SC 1565*** to contend that the appointment on daily wages basis is not an appointment to the post according to the service rules. Termination of daily wage employees due to coming end of project employing them, the Court cannot give directions to engage them in any other work or appoint them against existing vacancies.
- (vii) ***State of U.P And others v. Ajay Kumar, (1997) 4 SCC 88*** to contend that High Court committed error in directing to regularize the services of daily wage workers when any vacancy arises.
- (viii) ***Gram Sevak Prashikshan Kendra v. The Workmen***, Civil Appeal arising out of S.L.P. (c) No.4658/93 and 5717/93 to contend that the services of temporary employees cannot be regularized unless there exists sanctioned posts.

5. On the other hand, Ms.Ghaisas supported the impugned order.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The first party came with the case that the schemes cannot be treated as an Industry within the meaning of Section 2(j) of the Act. The Labour Court has considered this aspect in paragraph-6. After considering the decisions in *Chief Conservator of Forests and another v. Jagannath Maruti Kondhare, 1996(I) CLR 680* as also *State of Maharashtra, Forest Department and Anr. v. Sarva Shramik Sangh & Anr, 2000 (III) CLR 122*, the Labour Court held that the Department of Social Forestry is an Industry within the meaning of Section 2(j) of the Act. I, therefore, do not find any merit in the submission of Ms. Bane that the Social Forestry Department is not an Industry.

7. First party also contended that it has not terminated the services of the second party and the second party on her own volition did not report on duty after 1.6.1991. Labour Court has considered this aspect in paragraphs-7 and 8. Labour Court held that once the first party came with the case of voluntary abandonment of service, it has to issue notice to the workman as also hold departmental enquiry. In the present case, no notice was

issued by the first party calling upon the second party to resume duties. Equally, no enquiry was held in that regard. The Labour Court relied upon the decisions in (1) *Gaurishankar Vishwakarma v. Eagle Spring Industries Pvt. Ltd. & Ors.*, 1988 (1) CLR 38, (2) *Gangaram K. Medekar v. Zenith Safe Mfg. Co. & Ors.*, 1996(I) CLR 172, and (3) *Mahamadsha Ganishah Patel and another v. Mastanbaug Consumers' Co.op. Wholesale & Retail Stores Ltd. and another*, 1998(I) CLR 1205 and held that the first party has terminated the services of the second party in breach of the provisions of Section 25F & 25G of the Act and it is not a case of abandonment of service as contended by the first party. After considering the material on record, I do not find that the Labour Court committed any error in that regard.

8. A perusal of the impugned order shows that before the Labour Court following contentions were raised:

- (i) Department of Social Forestry is not an industry.
- (ii) The first party did not terminate the services of the second party. The second party had voluntarily left the job on 1.6.1991 and thereafter never came for reporting for duty.

In other words, the first party came with the case that the

second party had voluntarily abandoned the services and the first party did not terminate her services. The first party did not agitate the points which are sought to be raised for the first time in this Petition. No data is produced by the first party showing the sanctioned posts and availability of vacancy on the sanctioned posts. Equally no contention was advanced before the Labour Court to the effect that as the second party was working on daily wages basis in the scheme and that contention was not dealt with by the Labour Court. In view thereof, the reliance placed by Ms. Bane on the decisions in the cases of Municipal Council, Tirora (supra), Executive Engineer ZP Engg.Div. (supra), Delhi Dev. Hort. Employees Union (supra), Maharashtra State Co-operative Growers Marketing Federation Ltd. (supra), State of Rajasthan (supra), State of Himachal Pradesh (supra), State of U.P. (supra) and Gram Sevak Prashikshan Kendra (supra) does not advance the case of the first party. Quite apart, the learned A.G.P. has placed on record the instructions received from the officers of Social Forestry Department from time to time. A perusal of the instructions shows that the second party died on 13.8.2009 and in pursuance of the order dated 15.7.2003 passed in C.A. No.238/2003 in the above Petition, the first party was depositing wages in the account of the

second party maintained with Pen Co-operative Bank, Karjat.

9. As during pendency of the petition, the second party has expired, the order of reinstatement passed by the Labour Court requires to be modified and it is accordingly modified and the direction to reinstatement of second party stands set aside. The second party is entitled to other benefits, such as, continuity of service and back-wages as per the impugned order. Subject to this direction, the Petition fails and the same is dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.

(R. G. KETKAR, J.)