

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4576 OF 2000

1. The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Beed.
2. The Deputy Engineer,
Minor Irrigation Sub-Division
Georai, Tq.Georai, Dist.Beed,
3. The Chief Executive Officer,
Zilla Parishad, Beed – PETITIONERS

VERSUS

1. Baburao s/o Bhanudas Magar,
Age-27 years, Occu-Service,
R/o Dhanegaon, Post Ardhapimpri,
Tq. Georai, Dist. Beed,
2. The State of Maharashtra – RESPONDENTS

WITH
WRIT PETITION NO.4577 OF 2000

1. The Chief Executive
Officer, Zilla Parishad,
Beed,
2. The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Beed,
3. The Deputy Engineer,
Minor Irrigation Sub-Division
Zilla Parishad, Georai,
Tq. Georai, Dist. Beed – PETITIONERS

VERSUS

1. Mittu s/o Limbaji Awile,
Age-24 years, Occu-Service
(As shown in complaint)
R/o Wadgaon Dhok Post,
Madalmohi, Tq.Georai,
Dist.Beed
2. The State of Maharashtra – RESPONDENTS

Mr.S.R.Yadav-Lonikar, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/03/2018

ORAL JUDGMENT :

1. None had appeared for the litigating sides on 09/05/2017.
None appeared even on 12/05/2017. None appear for the litigating sides even today.
2. Rather than dismissing these petitions in default, I have gone through the petition paper books. This Court had ordered on 05/12/2001 while admitting the petition that the status of respondent No.1 / employee will be subject to the result of this petition.
3. It is obvious that both the impugned judgments are ex-parte.

Respondent No.1 in both these petitions and the petitioners are identically placed and hence this Court had ordered that both these matters would be heard together.

4. The Industrial Court has allowed Complaint (ULP) Nos.102/1996 and 132/1996 by the identical ex-parte judgments dated 12/11/1998. The petitioner/Zilla Parishad did not respond to the notices of the Court. No written statement was filed. The respondents / original complainants were not cross-examined and no evidence was led.

5. However, there is one factor in these two matters which cannot be ignored. Both the original complainants have specifically averred in their complaints that both of them are working on Employment Guarantee Scheme (EGS) as labourers from 07/01/1988 and 01/09/1989. The Industrial Court has recorded the said averments in paragraph Nos.2, 4 and 11 of the impugned judgment.

6. This Court has taken in a view in Chief Executive Officer, Zilla Parishad, Ahmednagar Vs. Daulat Narsingrao Deshmukh and another {2001(2) Mh.L.J. 543 and Arvind G.Chaudhari and another Vs. Dhanraj Nathu Patil and another [2008(5) Bom.C.R. 106] that

employees who are working on EGS, cannot prefer a ULP complaint or initiate matters under the Labour Laws for seeking reinstatement or for regularization in service. As such, *prima-facie* both the complaints would not be maintainable, if it is proved that the complainants were working on EGS.

7.. This Court has declined interim relief to the petitioner/Zilla Parishad. In this backdrop, I deem it appropriate to partly allow these petitions by imposing costs to reduce the rigours of litigation suffered by the respondents and remit these matters to the Industrial Court for allowing the petitioners to file their written statement as well as lead evidence so as to enable the Industrial Court to conclude on the basis of the record as to whether both these respondents were working on EGS or otherwise.

8. Both these petitions are, therefore, partly allowed. The impugned judgments dated 12/11/1998 are quashed and set aside and Complaint (ULP) Nos. 102/1996 and 132/1996 stand remitted to the Industrial Court at Aurangabad.

9. The Industrial Court shall permit the petitioner/Zilla Parishad to file its written statements in both these complaints, on or before

13/04/2018. Documents, if any, shall be produced by the petitioner alongwith the written statement. The Industrial Court shall recast the issues after considering the contentions of the petitioners and shall especially frame an issue as to whether these complainants are working on EGS. It shall decide the 2 complaints as expeditiously as possible and on or before 31/01/2019.

10. The petitioners shall pay costs of Rs.50,000/- to each of these respondents since the remanding of these matters for a decision afresh virtually amounts to reversing the clock by 20 years. The respondents would suffer the rigours of litigation and hence would be compensated with the said costs that the petitioners shall deposit before the Industrial Court on or before 27/04/2018 and will not seek extension of time. The respondents would withdraw the said amounts without conditions. If the said amount is not so deposited, the Industrial Court would issue appropriate orders for recovery of the said amounts.

11. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)