

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3677 OF 2004

The State of Maharashtra,
Through the Divisional Forest Officer,
Osmanpura, Division Aurangabad

-- PETITIONER

VERSUS

Shivaji Baburao Satdive,
Age - years, Occu-Nil,
R/o Pimpalgaon, Post Belgaon,
Via Shivur, Tq. Vaijapur,
Dist. Aurangabad

-- RESPONDENT

Mr.S.P.Sonpawale, AGP for the petitioner.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 09/05/2018

ORAL JUDGMENT :

1. The petitioner / Forest Department is aggrieved by the judgment and award dated 26/11/2002 by which the Labour Court has allowed the Ref.(IDA) No.171/1989 and has granted reinstatement with continuity and back wages to the respondent w.e.f. 01/06/1987.

2. This Court had admitted this petition and stayed the impugned judgment by order dated 06/09/2007. The respondent was permitted to claim last drawn wages u/s 17-B of the I.D.Act, 1947.

3. Learned Advocate for the respondent submits on the basis of the record that he was 35 years of age in 1992 and must have attained the age of superannuation at 58 years in 2015.

4. I have considered the strenuous submissions of the learned AGP on behalf of the petitioner and the learned Advocate on behalf of the respondent.

5. The respondent claimed to have joined the petitioner on daily wages as a Watchman" on 01/06/1981. He claims to be orally terminated w.e.f. 01/06/1987. He raised an industrial dispute and approached the Labour Court in Ref.(IDA) No.171/1989.

6. The petitioner entered its written statement on 31/05/1996. It has consistently averred in the written statement that the respondent was working on daily wages under the Employment Guarantee Scheme (E.G.S.). He worked intermittently. He was never engaged as a Watchman. He was working on daily wages. After the EGS work under the Shivoor Range came to an end, the respondent was permitted to report at another place for working on EGS.

7. Both the sides have led oral and documentary evidence. The

respondent denied working on EGS. He states that he was working as a Watchman on a daily wages. His salary was paid through a cash voucher.

8. The petitioner has examined two witnesses namely Ramesh M.Saraf, who was the Range Forest Officer (E.G.S.), Vaijapur and Goraksha M.Summbh who was a Range Forest Officer at Sillod. Both have specifically deposed that they were associated with the E.G.S. The respondent was engaged under the E.G.S. He worked between July 1981 to April 1987 on daily wages under E.G.S. initially at Pimpalgaon plantation and then Shivoor Range. Both have stated in their deposition that the respondent was working on EGS. Mr.Saraf has, however, stated in paragraph No.3 of his deposition that the respondent was working as a Watchman.

9. Learned Advocate for the respondent, therefore, contends that if the witnesses of the petitioner concede that he was working on daily wages as a "watchman", he cannot be said to be working under E.G.S. Learned Advocate for the petitioner submits that the areas covered under E.G.S. also require a Watchman. All payments were made to the respondent under the E.G.S.

10. There is no dispute as regards the duration of work performed by the respondent from 01/06/1981 to 31/05/1987. The only issue that needs adjudication is as to whether the respondent was actually working on E.G.S. He has consistently claimed that he was working as a Watchman on daily wages. The petitioner and its two witnesses have brought it on record that the respondent was working on E.G.S. The Labour Court has disbelieved the pleadings and the deposition of the two witnesses on the ground that the petitioner had not taken a stand before the Conciliation Officer that the respondent was working on E.G.S. and cannot lodge a claim for reinstatement in service. This stand has been taken in the written statement.

11. I find that the petitioner has not taken sufficient pains to bring on record all documentary evidence to indicate that the respondent was in fact a labourer deployed under the E.G.S. That would have settled the issue if the respondent was actually working on E.G.S. The worrying factor in this case is that if the stand of the petitioner is disbelieved, the respondent would have to be paid compensation in lieu of reinstatement in service since he has worked for about 6 years and is out of employment for the last 30 years. Per contra, if compensation is paid to the respondent and if he really was working on E.G.S., it would amount to a miscarriage of justice. Learned AGP

has also taken a stand that as the Forest Department of the State Government is not an Industry u/s 2(s) of the I.D.Act, 1947, the State Exchequer would be unnecessarily taxed.

12. One witness of the respondent, who is the Range Forest Officer, has specifically deposed that the chart showing actual working days of the respondent was prepared from the cash book maintained for the E.G.S. The respondent was working only under the E.G.S. and he was deployed at the Shivoor and Pimpalgaon range which were shown under the Shivoor Range in the scheme.

13. This Court had heard the learned Advocates while passing the order dated 06/09/2007. The impugned award was stayed by recording the statement of the petitioner that the respondent has not been reinstated in service. However, this Court observed in the said order that he would be entitled to last drawn wages for each month after this petition is admitted by this Court u/s 17-B of the I.D.Act. It is informed that the last drawn wages of the respondent were Rs.8/- per day and his total last drawn wages would be about Rs.44,920/-.

14. A chart showing the total number of days worked by the

respondent, has been placed on record at page No.33. Barring 1981 and 1987, the respondent was practically working for more than 320 days. The said chart however mentions that he was working on E.G.S. The cash book, on the basis of which the chart was prepared, indicates that the respondent was working on E.G.S.

15. In the above backdrop, the respondent may not be entitled to any benefits keeping in view the series of judgments/orders passed by this Court concluding that an employee working on the E.G.S. will not be entitled for staking a claim for continued work or reinstatement or regularization by approaching the Labour Court or the Industrial Court.

16. Since this Court has permitted the respondent to claim last drawn wages u/s 17-B, the respondent would be entitled for an amount of Rs.44,920/- as full wages till he attained the age of retirement in 2015. Gratuity would also be approximately the same amount. As the petitioner failed to bring sufficient documents before the Labour Court to prove conclusively that the respondent was working on E.G.S., I am of the view that an equitable order could be passed in order to ensure that the State Exchequer is not unnecessarily burdened and at the same time, the respondent is

adequately compensated.

17. Taking into account the peculiar facts as above and the directions of this Court in paragraph No.3 of the order dated 06/09/2007, I deem it appropriate to grant the last drawn wages of the respondent from 1987 till 2015 and gratuity as a lumpsum compensation.

18. This petition is, therefore, partly allowed. The direction of the Labour Court at clause 3 in the impugned award is set aside and instead, the petitioner is directed to pay an amount of Rs.1,00,000/- as a lumpsum compensation in lieu of all benefits (including gratuity) to the respondent within a period of 12 (twelve) weeks from today, failing which, interest @ 6% on the said amount shall be payable per annum from 2015, which is the year of retirement of the respondent and the interest component will be recovered from the personal salary of the Divisional Forest Officer, Aurangabad.

19. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)