

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4839 OF 2004

Appasaheb Sampat Bankar

Since died, through legal heirs,

[1a] Kusum w/o Appasaheb Bankar,
Age-45 years, Occu-Nil,
R/o at Post Mathapur,
Tq. Shrirampur, Dist. Ahmednagar,

[1b] Anil s/o Appasaheb Bankar,
Age-25 years, Occu-Driver,
R/o At Post Mathapur,

[1c] Sandip s/o Appasaheb Bankar,
Age-19 years, Occu-Nil,
R/o At Post : Mathapur,
Tq. Shrirampur, Dist.Ahmednagar

-- PETITIONERS

VERSUS

The Executive Engineer,
Ahmednagar Irrigation Circle,
Ahmednagar

-- RESPONDENT

Mr.P.L.Shahane, Advocate for the petitioner.
Mr.S.P.Sonpawale, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/05/2018

ORAL JUDGMENT :

1. The petitioner (now deceased) is aggrieved by the judgment and award dated 01/09/2003 delivered by the Labour Court by which Ref.(IDA) No.29/1996 has been rejected.

2. I have considered the strenuous submissions of Mr.Shahane, learned Advocate appearing on behalf of the legal representatives and the learned AGP on behalf of the respondent. I have gone through the 27 grounds formulated in the memo of the petition.

3. The petitioner has laid stress on the following issues :-

- [a] Since the petitioner has worked continuously from 01/06/1983 to 01/07/1988, the Law of Retrenchment should have been followed.
- [b] Juniors were retained in service and the petitioner was disengaged.
- [c] Having worked as a daily wager with the Ahmednagar Irrigation Division, the petitioner was entitled for being brought on Converted Regular Temporary Establishment (CRTE) since the Kalelkar Settlement does not mandate continuous working for 240 days in 5 consecutive years.
- [d] The Kalelkar settlement requires that a daily wager should work for 5 consecutive years irrespective of the number of days he has worked in each year.
- [e] The theory of the respondent that the petitioner abandoned employment cannot be accepted as he had never declined to work on daily wages.

4. The learned AGP submits that this Court would interfere with the impugned award only if it appears to be perverse or erroneous. Merely because a second view is possible, cannot be the ground for causing any interference.

5. I find from the record that the petitioner has specifically contended that he was working continuously from 01/06/1983 till 01/07/1988 with the respondent. Since he was orally disengaged on 01/07/1988, he raised an industrial dispute on 06/01/1995. He had issued a notice for production of documents to the respondent. Since the documents were not produced, an adverse inference deserves to be taken.

6. I find from the record that the deceased was permitted to take inspection of the muster record and similar documents. After inspecting the documents with regard to the services rendered by him at Kaigaon Section, it was revealed that he was working from 14/01/1984 till 04/10/1987. He was given inspection of the said musters for the period March 1983 to June 1988. The extract prepared by the respondent/Department at Exh.C-9/1 and C-7/1 also indicate that the petitioner was working from 14/01/1984 to

04/10/1987.

7. I do not find that the petitioner was terminated by the act of the respondent who has taken a stand that the petitioner stopped reporting for duties as a daily wager after 05/10/1987, for the reason that had he been terminated by the respondent either on 05/10/1987 or on 01/07/1988, he would have approached the Labour Court or would have raised an industrial dispute with promptitude. He raised an industrial dispute on 06/01/1995, which is after about 8 years of his disengagement.

8. The stand taken by the respondent therefore appears to be probable that the petitioner himself stopped reporting for duties from 05/10/1987.

9. In the above backdrop, the contention that juniors were retained in service and the petitioner was orally terminated, is rendered unsustainable.

10. The Labour Court has analyzed the evidence available on record and has arrived at its conclusions which I do not find to be perverse or erroneous.

11. As such, this petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)