

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

WRIT PETITION NO.1192 OF 2005

Ravindra s/o. Prabhakarrao Bramhane,
Age : 47 years, Occ. Nil,
r/o. Gajanan Vasahat,
Sangamner Road,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

..Petitioner

Vs.

The Executive Engineer,
(E.G.S.) Minor Irrigation,
Division-Ii, Gulewadi,
Sangamner,
Dist. Ahmednagar

..Respondent

AND

WRIT PETITION NO.1264 OF 2005

Nilkanth s/o. Ramchandra Sonawane,
Age : 41 years, Occ. Nil,
r/o. At Post, Nighoj,
Tq. Parner,
Dist. Ahmednagar

..Petitioner

Vs.

1. The Executive Engineer,
(E.G.S.) Minor Irrigation,
Division-Ii, Near Delhi Darwaja
Ahmednagar
2. The Collector,
Collectorate,
Ahmednagar

3. The State of Maharashtra,
through its Principal Secretary,
General Administration Department,
Mantralaya,
Mumbai

..Respondents

Mr.Pradeep Shahane, Advocate for petitioners
Mr.T.B.Bhosale, Advocate for respondent no.1
Mr.S.P.Sonpawale, AGP for respondent nos.2 and 3

CORAM : RAVINDRA V. GHUGE, J.

DATE : MAY 10, 2018

ORAL JUDGMENT :

1. In both these petitions, the petitioners have challenged the common judgments and award dated 25.07.2000 in so far as Reference (IDA) No.90 of 1993 and 28.06.2000 in so far as Reference (IDA) No.234 of 1994, respectively.

2. I have heard the strenuous submissions of the learned counsel for the petitioners and the learned AGP appearing on behalf of the respondent – State. The petitioners are identically placed and the respondent is the same department and hence, both these petitions are taken up together.

3. Though the learned AGP has strenuously defended the impugned awards and has prayed that both these petitions may be dismissed with heavy costs, I find that both these petitions deserve to be entertained for a limited purpose, on the following facts :-

(A) Both the petitioners were working as Mustering Assistants in Class-IV category, under the Employment Guarantee Scheme (E.G.S.)

(B) Both these petitioners were initially deployed under E.G.S. for maintaining record of E.G.S. in their capacity of Mustering Assistants.

(C) In the statements of claims putforth in their cases, none of the petitioners have contended, much-less admitted, that they are working as laborers under the E.G.S.

(D) In both the impugned awards, the Labour Court, while referring to the cases of these petitioners, has observed that "admittedly, these employees are working in E.G.S.", which is not borne out from the record.

(E) The impugned awards delivered by the same First Labour Court, Ahmednagar, reveal that the Labour Court has taken all the cases of the Mustering Assistants together. After issues were framed and without permitting the workmen, who are termed as second parties in the Reference case, to lead oral evidence, the Labour Court proceeded to deliver its award before recording of the oral evidence, by observing that a law issue is involved and the Reference case can be disposed of on a law point.

4. In my view, whether a claimant before the Labour Court/Industrial Court or Tribunal can be said to be a labourer under the E.G.S. or a Mustering Assistant working for E.G.S. establishment, is a mixed question of facts and law, because in every matter of such a nature, the respondent takes a stand in the written statement that the claimant is an E.G.S. worker and the claim is untenable. Merely because a defence is taken that the claim is of an E.G.S. worker, will not be sufficient for disposing of the claim of the worker. The department concerned will have to lead oral and documentary evidence to establish that the claimant was inducted in the E.G.S, his name was maintained on the E.G.S. Register, the Revenue Officer In-Charge of E.G.S. used to make payments from the E.G.S. funds, E.G.S. card was issued to such a worker, E.G.S. payment vouchers are maintained, etc.

5. I find that the Labour Court felt that the cases of such workers could be dealt with together on

the solitary point that they are E.G.S. workers and hence, their cases were untenable. In cases where the workers admitted that they were working as E.G.S. labourers, the Labour Court could proceed to dispose of such cases as being untenable. But, in cases where the second party workman has not admitted that he is an E.G.S. worker, the Labour Court was obliged to allow the parties to lead oral and documentary evidence and then, decide the Reference cases.

6. Once a Reference case is made to the Labour Court by the appropriate Government under the Industrial Disputes Act, 1947, the Labour Court can dispose of the Reference case, if the parties have arrived at settlement terms and if not, the Labour Court has to answer the Reference case by following the entire procedure laid down in law, on its merits, which presupposes that the parties must be permitted to lead oral and documentary evidence. There can be an exception when the second party employee is not a workman under Section 2(s) of the I.D. Act and this

is established by leading evidence on a preliminary issue.

7. In the light of the above, both the impugned judgments are set aside to the extent of these petitioners in Reference (IDA) No.90 of 1993 and Reference (IDA) No.234 of 1994. Both these Reference cases are remitted to the First Labour Court, Ahmednagar, with the following directions :-

(A) The litigating sides shall appear before the Labour Court on 21.06.2018. Formal notice need not be issued to them.

(B) Both the litigating sides would be permitted to lead oral and documentary evidence in respect of their cases.

(C) The Labour Court, while deciding these Reference cases, would consider the Government Resolution dated 01.12.1995 issued by the Government of Maharashtra by

which, a scheme was proposed before the Hon'ble Supreme Court in Civil Appeal No.15339 of 1996, which scheme was accepted by the Hon'ble Supreme Court by order dated 02.12.1996.

(D) The Labour Court shall also consider the judgment delivered by this Court in the matters of **C.E.O., Zilla Parishad, Ahmednagar, Vs. Daulat Narsingrao Deshmukh, (2001)2 Mh.L.J. 543** and in the matter of **Shri Ramchandra Kondiba Mahajan Vs. The State of Maharashtra, decided on 19.07.2012 in Writ Petition No.2946 of 1997 at the Principal Seat of this Court.**

(E) Considering the passage of time, the Labour Court is expected to decide these Reference cases as expeditiously as possible and in any case, on or before 28th February, 2019.

(F) The Writ Petitions stand allowed
and Rule is made absolute accordingly.

[RAVINDRA V. GHUGE, J.]

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