

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

WRIT PETITION NO. : 11 OF 2006

1. The Executive Engineer,
Environmental Development,
Division, Aurangabad.
At present Lower Dudhana
Project Division,
Sailu, District Parbhani.

2. The Sub Divisional Officer,
Jayakwadi Project Stage No.II,
Sub Division No.23, Tq.Georai,
District Beed.
At present Paithan Hydro
Electric Project, Sub Division,
Aurangabad.

...PETITIONERS

-VERSUS-

Shri Babu s/o Govindrao Dalvi,
R/o Yeota, Post Mahora,
Taluka Jafrabad, District Jalna.
Age : 43 years.

...RESPONDENT

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Advocate for the Petitioners : Ms.Geeta Deshpande.

Advocate for the Respondent : Shri A.S.Shelke.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 05th MARCH, 2018.

ORAL JUDGMENT:-

1] By this petition, which is filed on 23/04/2002 and which was subsequently dismissed in default and then restored, the petitioner Executive Engineer of the Environmental Development Division, Aurangabad is aggrieved

by the judgment and order dated 24/10/2001 delivered by the Industrial Court, by which, Revision (ULP) No. 38/1996 filed by the respondent/workman has been allowed and he has been granted reinstatement with continuity and full back wages from the date of his termination dated 31/10/1983.

2] Learned counsel for the petitioner has strenuously criticized the impugned judgment of the Industrial Court. It is contended that the Industrial Court was exercising its revisional powers under Section 44 of the MRTU and PULP Act, 1971 which are extremely narrow and limited. The Industrial Court cannot arrive at a finding as if it is a Court of record. When the Labour Court had granted lesser benefits by directing the reinstatement without continuity and without back wages by its judgment dated 15/03/1995, the Industrial Court could not have proceeded to deal with the said (ULP) Complaint as if it is a Trial Court.

3] It is further pointed out that the respondent was engaged as a labourer on daily wages at the Jayakwadi Project Sub-Division No.16, Dhondrai on 01/09/1982. His work on daily wages was concluded on 31/10/1983. He had, therefore,

worked for only fourteen months. The project work at Dhondrai came to an end and the next stage of the project work began at stage No.2 in Sub-Division No.5 at Wadigodri, Taluka Ambad, District Jalna. The permanent staff members were moved to Wadigodri and whichever daily wage labourers were available, they were given work at Wadigodri. The said Jayakwadi Project has now come to an end practically more than three decades ago. In these circumstances, a daily wager who has worked for fourteen months and is out of employment for the past 35 years, cannot be granted reinstatement, much less with continuity and full back wages.

4] Learned counsel for the respondent/workman submits that he was in dire need of work and was ever willing to work. He was always in litigation so as to seek an employment. There were several daily wagers like the respondent, who were working at different projects under the petitioner establishment. Many of them were confirmed in employment subsequently. The respondent was singled out and was orally refused work. He has specifically contended before the Labour Court that there was an oral termination in violation of Section 25-F and 25-G of The Industrial Disputes

Act, 1947.

5] Shri Shelke, strenuously submits that ever since 1984, when the respondent preferred his complaint (ULP) within limitation, he has been in litigation for the past almost 34 years. Though this is his first round in the High Court, he was before the Industrial Court on two occasions. His complaint was initially allowed and the establishment approached the Industrial Court. The Industrial Court remanded the complaint back to the Labour Court which was the second hearing. Thereafter, the respondent partly succeeded and approached the Industrial Court in revision. The fact that the petitioner has not challenged the order of the Labour Court dated 15/03/1995 granting reinstatement in service on “*as and when required basis*”, the petitioner/establishment now cannot say that they cannot reinstate the respondent in employment.

6] The facts situation in this proceeding has been recorded in the foregoing paragraphs. The Honourable Apex Court has dealt with similar cases in the following judgments, when a daily wager had put in a short spell in employment and

was out of employment for a long duration :

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];*
- (c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558]; and*
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].*

7] The Honourable Apex Court has concluded that where employees put in a short spell of employment which is followed by a long duration of unemployment, granting reinstatement would be impracticable and would not be pragmatic. Compensation in lieu of reinstatement could be granted. The Honourable Apex Court has held that compensation of about Rs. 40,000/- to Rs. 50,000/- per year of service put in by the daily wager can be granted. In the matter of Bhavnagar Municipal Corporation vs. Jadeja Govubha Chhanubha, AIR 2015 SC 609, the Honourable Apex Court in a given situation has granted compensation of Rs. 2,50,000/-.

8] In the instant case, the respondent/workman had worked for fourteen months and is out of employment from

01/11/1983 till this date which is a period of more than 34 years. He must have attained the age of superannuation for Class-IV employees which is 58 years. However, it cannot be ignored that this Court had directed the petitioner/establishment on 27/06/2006 to deposit an amount of Rs. 10,000/- in this Court and subject to deposit, the impugned judgment of the Industrial Court was stayed. The office remark dated 01/03/2018 indicates that the petitioner establishment has not deposited the said amount. Had the said amount been deposited, it would have practically reached an amount of Rs.40,000/- over a period of 12 years, upon being invested in any Nationalized Bank. So also, the petitioner would be entitled for compensation of Rs. 50,000/- for having put in about fourteen months in employment, keeping in view the law laid down by the Honourable Apex Court in the above referred judgments.

9] In that view of the matter, this petition is partly allowed. The impugned judgment of the Industrial Court dated 24/10/2001 stands modified. With such modification, the judgment of the Labour Court dated 15/03/1995 would merge in the order of this Court. In lieu of reinstatement in

service with continuity and back wages, petitioner No. 2, as is informed by the learned counsel for the petitioners, The Sub Divisional Officer, Jayakwadi Project Stage No.II, Sub Division No.23, Taluka Georai, District Beed, at present Paithan Hydro Electric Project, Sub Division, Aurangabad is directed to pay a quantified lump sum amount of Rs. 1,00,000/- (Rupees One Lac) to the respondent Babu Govind Dalvi by depositing the said amount in this Court on or before 16/04/2018, failing which, the said amount shall carry interest at the rate of Rs. 6 % per annum from the date of this order and the component of interest shall be recovered from the in charge officer of the above mentioned petitioner No.2 from his personal salary.

10] After the amount is deposited, the respondent would be at liberty to withdraw the said amount without conditions upon identification by the learned advocate and on submitting his latest photograph and a copy of the voters Identity Card or Aadhar Card.

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

(RAVINDRA V. GHUGE, J.)

shp/-