

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5761 OF 2010

The Divisional Manager,
Forest Development Corporation
of Maharashtra Limited,
Division Kinwat, Tq. Kinwat,
District Nanded.

..Petitioner

Versus

Shri Chandoba Janaji Gaikwad
R/o at post Gokunda, Tq. Kinwat,
District Nanded.

..Respondent

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Advocate for Petitioner : Mr. Kulkarni Shailendra S.
Advocate for Respondent : Ms. Jamdhade M.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 01, 2018

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ORAL JUDGMENT:-

1. The petitioner / Corporation is aggrieved by the judgment and award dated 14.1.2010, by which, the Labour Court has allowed Reference (IDA) No. 2 of 2005 and has directed the reinstatement of the respondent / Worker with continuity and 50% backwages w.e.f. 1.5.2001.

2. While issuing notice in this petition on 2.7.2010, the impugned judgment and order was stayed by this Court. An

application for payment of last drawn wages under Section 17-B of the Industrial Disputes Act has not been filed by the respondent. This petition was dismissed in default after 2.7.2010 for non-payment of bhatta and the same was subsequently restored. The interim relief was continued while admitting this petition on 18.8.2011.

3. The contentions of the petitioner can be summarised as under:-

(a) The petitioner has denied oral termination of the respondent.

(b) There is a confusion as regards the date of the cause of action since the demand notice put forth by the respondent indicates that he was orally terminated on 10.5.2001.

(c) The order of reference to the Labour Court dated 3.12.2004 mentions the date of oral termination as 1.5.2001.

(d) The oral evidence of the workman mentions the

date as 10.5.2001.

(e) The workman was working on Employment Guarantee Scheme (EGS).

(f) The experience certificate is not trustworthy and does not reflect the true picture.

(g) A daily wager cannot be reinstated in service.

(h) There is no evidence that he was working continuously as a Watchman with the petitioner / Corporation.

(i) The case of the respondent is covered by the judgment of this Court dated 2.12.2011, delivered at Nagpur in Writ Petition No.5649 of 2009.

(j) The petition deserves to be allowed.

4. Learned counsel for the respondent / Workman has strenuously opposed this petition and contended that the petition deserves to be dismissed. She concedes that Section 17-B was

not pressed into service for seeking payment of the last drawn wages during the pendency of this Writ Petition. The respondent has proved that he was working continuously from 3.8.1988 till 1.5.2001.

5. In so far as the confusion about the date of termination is concerned, she submits that the respondent was working from 3.8.1988 continuously and was orally removed from employment on 10.5.2001. The demand notice also mentions the said dates. Inadvertently, the office of the Deputy Commissioner, Labour wrongly mentioned the date of oral termination as 01.05.2001 and therefore, the same date was continued as being the date of oral termination throughout the proceedings.

6. I have considered the submissions of the learned Advocates and have gone through the record and proceedings received from the Labour Court.

7. There is no dispute that as the Corporation took a stand that they have not orally terminated the workman, either on 01.05.2001 or on 10.5.2001 and there was no issue of payment of retrenchment compensation. This is the specific contention of the Corporation. In this backdrop, the judgment dated

2.12.2011, cited by the petitioner would be of no assistance since the specific issue before the Nagpur Bench of this Court was that the workman was retrenched from employment after following the due procedure of law. Since there was a minor shortfall in the payment of compensation, that the Labour Court had granted reinstatement. This relief was set aside by this Court concluding that the shortage of retrenchment compensation can be cured and the Corporation was accordingly directed to pay the shortfall which was Rs.3691/- only.

8. I find from the record and proceedings before me that the workman has specifically averred that he was orally terminated from employment on 10.5.2001. The order of reference based on the failure report of the Conciliation Officer indicates that the Labour Department has committed the error of writing the figure '10' as '1'. The month and the year is not in dispute. This issue, however, would not be of much significance since the Corporation has taken a stand that the workman was never orally terminated from employment, either on 1.5.2001 or on 10.5.2001. As such, even if the date is said to be 10.5.2001, keeping in view the demand notice along with the justification filed by the workman indicating 10.5.2001 as his date of termination, it would not be fatal to his case.

9. The respondent / Workman has proved through the certificate issued by the Regional Forest Officer (RFO), namely, Annaldewar. After the document was proved before the Labour Court and in the face of denial by the Corporation, the RFO Mr. Annaldewar should have been stepped into the witness box and should have either denied his signature or should have denied the certificate. He has done neither. He was still the RFO, as is admitted by the witness of the Corporation, namely, Shri Sharad Bavaskar. Consequentially, the experience certificate Exhibit U/9/1 having been proved, cannot be discarded.

10. The Corporation has also taken a stand that the respondent was initially a labourer working on EGS and subsequently was a watchman working on EGS. In this backdrop, the Corporation was obliged to produce the EGS card of the respondent, the EGS monthly muster roll duly signed by the competent authority deputed for conducting the work of EGS and all such documents, which would establish that the respondent was working in EGS.

11. In the examination-in-chief of the Corporation's witness, he has merely stated that the respondent was working on EGS,

which scheme lasted for about 9 years. It was admitted that the alleged EGS card of the respondent was not produced. After perusing the vouchers of payment, placed on record, he could not identify that the respondent was working on EGS. Those vouchers also did not carry the signature of the RFO.

12. The said witness then admitted in his cross-examination that the experience certificate was not issued in his presence. The Corporation also produced a copy of the experience certificate with attestation, which indicated that the origin of the certificate was from the records of the Corporation.

13. The said witness then admitted that the EGS card, which is issued for each EGS employee, was not produced. He further admitted that no documents were produced, so as to indicate that the respondent was working on EGS. He then canvassed that the post of a watchman is on EGS, which statement cannot be believed for the reason that a watchman of the Corporation or such State instrumentality, who is engaged to guard the property of the department, is never engaged on EGS. The EGS is meant to allot work intermittently to those unemployed youth so as to provide some source of earning. A substantive post of a watchman is never available on EGS.

14. The said witness then admitted that though he has claimed that the RFO has signed on some registers at Exhibit C-13/16 and 17, the said signatures are different.

15. It is on the basis of the fact situation as above, that the Labour Court has allowed the Reference. 50% backwages have been granted since the workman had not worked during the period of his termination.

16. Issue is only as regards whether the order of reinstatement with continuity of service and 50% backwages in the light of there being no evidence that, as on date, whether any post of a Watchman is available. The respondent proved that he has worked as a Watchman on daily wages from March 1988 to April 2001, which is about 13 years. He is out of employment from May 2001 till today, which is about 17 years. Since none of the parties are very sure about his date of birth and even if it is presumed that he is about 50 or 51 years of age, he may have another seven years in employment.

17. The Honourable Apex Court has delivered the following four judgments, while dealing with the cases of granting

compensation in lieu of reinstatement in service:-

1. *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal [2013 LLR 1009],*

2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],*

3. *BSNL Vs. Man Singh [(2012) 1 SCC 558] and*

4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].*

18. The Honourable Apex Court has concluded that when an employee has put in a shorter span in service and was out of employment for a longer duration and a little span remains for attaining the age of superannuation, reasonable compensation of about Rs.40,000/- per year of service put in, can be granted in lieu of reinstatement and other benefits. Considering the same, if the same analogy is made applicable in the case of respondent, he would be entitled for a compensation amount of Rs.5,25,000/- in lieu of reinstatement in service, having worked for 13 years. Costs of litigation can be computed at Rs.25,000/- since he is litigating for the past about 17 years.

19. Since I find the above option to be practicable, this petition is partly allowed only to the extent of modifying the order of reinstatement in service with backwages and continuity, to be replaced by the direction to the petitioner to pay compensation of Rs.5,50,000/- (Rs. Five Lakhs and Fifty Thousand only/-) to the respondent within a period of three months from today, failing which the interest component at the rate of 6% per annum from the date of the award would be imposed. Though the compensation will be paid from the State exchequer, the amount of interest shall be paid from the personal salary of the Divisional Manager of the petitioner / Corporation, in case of delay.

20. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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