

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

WRIT PETITION NO. 13189 OF 2017

S M COMPUTERS PVT LTD THROUGH ITS EXECUTIVE DIRECTOR
VERSUS
ARJUN DATTATRAYA BARAWAKAR AND ANOTHER

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Advocate for the Petitioner : Shri Bedre Vinayak Sudhakar.

Advocate for Respondent 1 : Shri Barde Parag Vijay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd July, 2018

Per Court:

1 The Petitioner/ Management is aggrieved by the judgment and order dated 20.04.2017 delivered by the Industrial Court, Ahmednagar by which, Complaint (ULP) No.44/2007 has been allowed and the Management is directed to provide work to the Complainant and treat him as a permanent Computer Operator w.e.f. 01.01.2003 along with the difference of arrears. Back wages have not been granted by the Industrial Court.

2 I have considered the strenuous submissions of the learned Advocates and have gone through the petition paper book with their assistance.

3 The Management contends that it is an establishment, which

undertakes the projects for providing services to the Government of Maharashtra. One such project was initiated on 15.11.2001 and it was to expire after five years. Respondent No.1/ Workman was inducted as a computer operator on 09.02.2002. His joining report is placed on record wherein, he was permitted to join as a trainee computer operator in the Sub Registrar Office, Khandala, District Satara. The letter of reporting of staff was to be issued to him within a short duration of his joining. It is stated by Respondent No.1 that no such letter was subsequently issued to him.

4 The thrust of the Petitioner's case is that it undertakes project work and Respondent No.1 was engaged on the said project. His reporting for duties and taking up an employment with the Petitioner would amount to contractual employment for a particular project and Section 2(oo)(bb) of the Industrial Disputes Act, 1947 would become applicable. It is, therefore, strenuously submitted that the Industrial Court has completely lost sight of the fact that the contract was entered into by the Government of Maharashtra with M/s BAMCO Tech Private Limited on 15.11.2001 and that is how, M/s BAMCO Tech Private Limited, which was acquired by the Petitioner, merged into the Petitioner and Respondent No.1 was deployed by the Petitioner under the said contract.

5 The learned Advocate for Respondent No.1/ Workman submits that this petition emerges out of the industrial court proceedings.

Unless the oral and documentary evidence indicates that Respondent No.1 was engaged on the project and his alleged removal from service would amount to an exception to retrenchment under Section 2(oo)(bb) of the Industrial Disputes Act, 1947, no such inference can be drawn. The Petitioner has miserably failed before the Industrial Court to make out the case that Respondent No.1 was engaged on the project and as such, any contention beyond the record and proceedings of the Industrial Court, cannot be entertained.

6 It requires no debate that Section 2(oo)(bb) of the Industrial Disputes Act, 1947 provides for various forms of exceptions to retrenchment. Such termination falling within the meaning of the exceptions would save the employer from the allegation of illegal retrenchment. It is a matter of circumspection as to why this Petitioner did not issue a contractual appointment letter to Respondent No.1 and did not sign a contract "for" services rather than engaging him on a contract "of" service.

7 The copy of the affidavit in Marathi allegedly signed by Respondent No.1 is tendered across the Bar. The said document bears the date of the stamp vendor as 01.04.2003 and is said to have been signed subsequent thereto. In the said affidavit, Respondent No.1 allegedly states that he would not demand any remuneration from the Government, he would behave properly and he would perform work of a contract

employee diligently. Though this affidavit is a part of the record before the Industrial Court, I do not find that it would make good the deficiency of a proper contract or agreement for employment between the Petitioner and Respondent No.1 so as to invoke Section 2(oo)(bb).

8 The Industrial Court did not find any material on record, which would convince it to conclude that Section 2(oo)(bb) could be attracted. It did not find any material on record which would indicate that Respondent No.1 was engaged on a project.

9 I, however, find that Respondent No.1 has approached the Industrial Court after he was not allotted any work from 18.04.2007. Though he contends that he was continued in employment and was in employment when he preferred Complaint (ULP) No.44/2007, the fact remains that the Industrial Court, while considering the complaint on the date on which it was lodged, has granted the relief to Respondent No.1/ Workman in the form of directing the Management to provide work to the employee. I am, however, not going into the aspect as to whether, the complaint was maintainable since it does not appear that the Management had taken the stand that Respondent No.1/ Complainant was already removed from employment.

10 Respondent No.1/ Complainant has worked for a period of 05 years and 04 months. He is out of employment for the past 11 years. The Management contends that it has no work that can be allotted to

Respondent No.1. As such, this case can be considered for awarding compensation to Respondent No.1 in lieu of reinstatement by relying upon the following judgments of the Honourable Supreme Court :-

- (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]**.

11 The record reveals that these two parties have been engaged in litigation on various fronts. In several proceedings, the Petitioner/ Management has not responded to the court notices. Even when the matter was before this Court in the earlier rounds in Writ Petition Nos.2510/2009, 3722/2011 and 4498/2013 wherein, despite service of court notices, the Petitioner/ Management had not appeared in the matters and had not rendered any assistance to this Court. After remand to the Industrial Court, the Management appeared.

12 Considering the above and keeping in view that the Petitioner is a private establishment, I find that by quantifying compensation at the rate of Rs.50,000/- per year of service put in by Respondent No.1, the

Petitioner/ Management could be directed to pay compensation amount of Rs.3 lac to Respondent No.1/ Employee.

13 Insofar as the conduct of the Petitioner is concerned and keeping in view that despite several notices even of this Court, the Management had dared to remain away from the proceedings and had made the original Complainant suffer rigours of litigation, I find that an amount of Rs.1,25,000/- (Rupees One Lac Twenty Five Thousand) could be awarded to Respondent No.1/ Workman. The learned Advocate for Respondent No.1/ Workman submits, on instructions, that out of the said amount, Rs.25,000/- (Rupees Twenty Five Thousand) could be donated for a humane cause to the Government Ghati Hospital, Aurangabad.

14 Considering the above, this Writ Petition is partly allowed. The directions of the Industrial Court are modified and replaced by the direction to pay a lump sum compensation of Rs.4 lac to Respondent No.1/ Complainant, which amount the Petitioner/ Management would deposit in this Court on or before 03.08.2018. An amount of Rs.25,000/- (Rupees Twenty Five Thousand), besides the above amount of Rs.4 lac, shall be deposited by the Petitioner / Management as donation for the Ghati Hospital, Aurangabad (Government Medical College and Hospital, Aurangabad), with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital, Aurangabad CSR

Fund" on or before 03.08.2018.

15 If the Petitioner fails to deposit the amount in time as directed above, the said amount shall carry interest at the rate of 6% per annum from the date of the judgment of the Industrial Court dated 20.04.2017 until realization of the said amount.

16 After the amount of Rs.4 lac is deposited in this Court, Respondent No.1/ Workman shall withdraw the said amount by tendering an application duly identified by his Advocate along with his recent photograph and an identity proof in the nature of a copy of the Adhaar Card or Voter Identity Card.

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(RAVINDRA V. GHUGE, J.)