

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO. 1 OF 2005

The Divisional Forest Officer,
(Deputy Conservator of Forests)
Osmanpura, Aurangabad

Petitioner

Versus

Abdul Shaha Dada Shaha
age 45 years, occ. service
r/o Golegaon, Tq. Khultabad
Dist. Aurangabad

Respondents

Mrs. Kalpalata Bharaswadkar, advocate for petitioner.

**CORAM : R.M.BORDE &
A.M. DHAVAL, JJ.**
DATE : 7th JUNE, 2018

ORAL JUDGMENT : (Per R.M. Borde, J.)

1. Heard.
2. Appellant - Divisional Forest Officer is objecting to the decision rendered by the learned Single Judge of this Court in Writ Petition No. 4758/2004 confirming the judgment and order dated 05.12.2003 passed by the Industrial Court, Aurangabad in Complaint ULP No. 29/2000.
3. Respondent-employee was initially appointed as watchman on daily wages from 01.12.1982 by the appellant. He was in continuous employment as daily wager from the date of his appointment till the date of alleged oral termination dated 01.04.1989. Since the services of respondent were terminated

without giving one month notice and retrenchment compensation in view of Section 25(f) of the Industrial Dispute Act, he approached the Commissioner for Labour for making reference to the Labour Court. Reference was made which was registered as IDA No. 205/1989 in the Labour Court. After considering contentions of both the parties, the Labour Court came to the conclusion that the services of respondent were illegally terminated and he shall be entitled to be re-instated with continuity in service and backwages. Labour Court thus directed the employer to re-instate the employee in employment with continuity in service and backwages. The order passed by the Labour Court in Reference IDA No. 205/1989 has attained finality. Respondent was inducted in employment.

4. Since the respondent-employee was not granted benefits of permanency, he approached the Industrial Court by presenting complaint under section 28 read with Items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971. Respondent pointed out to the Industrial Court that after the decision in IDA No. 205/1989, he was re-instated in service after about one year. It is contended that on 06.03.1982 he was unlawfully terminated by petitioner. Respondent presented complaint ULP No. 35/1998 to the Labour Court and thereafter he came to be re-instated. He contends that some other junior employees than respondent have been granted benefits of permanency. Respondent alleges unfair labour practice at the hands of employer i.e. petitioner.

5. The Forest Department objected the complaint by contending

that the employee has not continuously worked for more than 240 days in a calendar year. It was also denied that some junior employees were granted benefits of permanency.

6. The learned Judge of the Industrial Court, on the basis of evidence produced before him, has recorded finding that the employee has proved that the employer has shown favouritism and partiality to one set of workers regardless of merit. It has also been recorded by the Industrial Court that the employee has been retained in employment as *badli* casual or temporary worker with an object to deprive him of the privileges of permanent employee. It has also been demonstrated by the employee that the junior employees have been granted benefits under the Government Resolution of the year 1996 and he has been denied the benefits.

7. The order passed by the Industrial Court granting relief of permanency in favour of employee was a subject matter of challenge in Writ Petition presented before this Court by the petitioner. In the petition, additional contention was raised that the forest department is not an industry and that respondent-employee is not a workman. The learned Single Judge has turned down the contention firstly on the ground that such a contention was never raised in both the proceedings decided earlier. It was recorded that reference IDA No. 205/1989 has been registered at the instance of the employee wherein directions have been issued to confer the benefits of continuity in service and backwages on the employee. It would be futile to contend that since the employer itself is guilty of not obeying the order of Labour Court in complaint ULP No. 205/1989 for substantial period and the

employee has not continuously worked for more than 240 days. It is a matter of record that the order passed in complaint ULP No. 205/1989 has been complied with belatedly after lapse of about one year and the employee continued in employment until he reached the age of superannuation. Even if assuming that the employer is entitled to raise contention that the forest department is not an industry in the proceeding before this Court, however, there is no basis to substantiate the contention. Considering the ratio laid down in the judgment delivered by the Larger Bench in the matter of Banglore Water Supply & Sewerage Board Vs. A. Rajappa and others reported in **(1978) 2 Supreme Court Cases 213**, the contention raised by petitioner in this regards does not deserve to be accepted.

8. For the reasons recorded above, there is no warrant to cause interference in the Letters Patent Appeal. Letters Patent Appeal is devoid of substance hence stands dismissed. No costs.

9. Pending civil application, if any, does not survive and stands rejected.

A. M. DHAVALÉ
JUDGE

R.M.BORDE
JUDGE