

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTER PATENT APPEAL NO. 226 OF 2009

IN

WRIT PETITION NO. 5485 OF 1996

The Chief Executive Officer,
Zilla Parishad,
Ahmednagar

.. Appellant

VERSUS

Shri Dagu S/o Rambhau Wakchaure,
At and P. Brahmangaon,
Tq. Kopargaon,
District Ahmednagar

.. Respondent

WITH

CIVIL APPLICATION NO. 13343 OF 2009

IN LPA/226/2009 IN WP/5485/1996

CHIEF EXECUTIVE OFFICER.

VERSUS

DAGU RAMBHAU WAGHCHOURE

...

Mr. S.T. Shelke, Advocate for appellant-applicant

Mr. A.S. Shelke, Advocate for respondent

...

CORAM : SUNIL P. DESHMUKH &
K.K. SONAWANE, JJ.

DATE : 29-10-2018

JUDGMENT :

1. Heard learned counsel for appearing parties.
2. It is the case of respondent, that he had been working with present appellant from 1979 to 05-10-1989 and

abruptly his services were terminated without following any procedure and termination was arbitrary.

3. It is an admitted position that respondent had been employed on daily wages by present appellant and according to appellant, he has been working intermittently from 1979.

4. It is the case of appellant that after 1988, the respondent had not worked. In the circumstances, the record, as was available, had been produced before the court. Relying on decisions of supreme court in the cases of *Rajasthan State Ganganagar Sugar Mills Ltd. Vs. State of Rajasthan and another* reported in 2005 AIR SCW 3160 and *Madhya Pradesh Electricity Board Vs. Hariram etc.* reported in 2004 AIR SCW 5476, it is being submitted that while primary burden is on the person claiming reinstatement and backwages, to be discharged about having worked for 240 days in a year and merely entering witness box and filing affidavit would not be sufficient being self-serving affidavit.

5. The labour court had found that inspite of categorical statement made in the deposition that the witness of appellant failed to produce muster rolls of relevant years,

the same had not been produced and further has found that principle of 'last come first go' also does not appear to have been followed while terminating services of respondent. It is further being referred to that respondent had not moved the court before 1992 and, as such, appellant may not be penalized. As such, labour court had directed reinstatement of the respondent without backwages.

6. The matter was taken to this court, bearing writ petition no. 5485 of 1996 and learned single judge vide judgment dated 11-11-2009 has observed in paragraphs no. 6 and 7 as under,

“ 6. The learned Judge of the Labour court took into consideration the fact that in spite of the directions to produce the documents, the employer has failed to produce the muster roll and seniority list on record and hence, an adverse inference was drawn to the effect that the employer has completed 240 days continuous service. So far as the aspect of seniority was concerned it was held that the employer has not followed the principle last come first go as stipulated under Section 25-G of the Industrial Disputes Act, 1947 and Rule 81 of the Industrial Disputes (Bombay) Rules. On the basis of this finding, it was held that the employee was entitled to be reinstated in service, as undisputedly there was non compliance of provisions of section 25-F and 25-G of the Industrial Disputes Act.

7. The only question is, whether the respondent employee has completed 240 days continuous service in the employment preceding to the date of his termination from service. The services of the respondent employee were terminated with effect from 5.10.1989. It is no doubt true that the burden to establish that the employee has completed 240 days continuous service lies on the employee. It also cannot be disputed that mere statement of employee by entering in to witness box that he has completed 240 days service, is not enough to

prove the fact. The learned Judge of the Labour Court has, however, relied upon the statement at Exh. C-17 filed by the employer, the evidence of the witness Vithal Vishwanath and the fact that the documents directed to be produced by the Court, were not produced on record. It is, on the basis of this material, finding of fact is recorded that the employee has completed 240 days continuous service prior to the date of his termination from his service. At any rate, the Labour Court has refused to grant for wages and has granted reinstatement with continuity in service. The finding of fact being based on the material available on record, it is the possible view of the matter. There is no case for interference in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India. The petition is, therefore, dismissed with no order as to costs.”

7. While learned counsel for appellant has relied on two decisions referred to above, learned counsel for respondent refers to and relies on the decision of three Judges Bench of supreme court in the case of *R.M. Yellatti Vs. Assistant Executive Engineer* reported in (2006) 1 SCC 106. He draws attention particularly to paragraphs no. 15 and 16 thereof, whereunder the two decisions relied on, on behalf of the appellant, have been discussed. Learned counsel further draws attention to paragraphs no. 17 and 19 reading thus,

“ 17. Analysing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the

workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon the facts of each case.

19. Before concluding, we would like to make an observation with regard to cases concerning retrenchment/termination of services of daily waged earners, particularly those who are appointed to work in Government departments. Daily waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given any written document which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the Government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities. In such cases, we are of the view that the State Governments should take steps to maintain proper records of the services rendered by the daily-wagers; that these records should be signed by the competent designated officers and that at the time of termination, the designated officers concerned should give certificates of the number of days which the labourer/daily-wager has worked. This system will obviate litigations and pecuniary liability for the Government. "

8. He submits that the observations in paragraphs no. 17 and 19 come quite close to the facts of the present case. In the circumstances, the letters patent appeal deserves to be dismissed.

9. Perusal of paragraphs no. 6 and 7 reproduced hereinabove of learned Single Judge as well as aforesaid reproduced paragraphs no. 17 and 19 of Supreme Court judgment, those lend lot of substance to the submissions on behalf of respondent.

10. However, it may also will have to be taken into account that the respondent has been out of service for more than 28 years and in the circumstances, instead of directing backwages for whole of the years, a lumpsum compensation as being frequently resorted to by the courts may make ends of justice meet. Taking into account, the recent trend, as would be reflected from decision in the case of *State of Maharashtra V. Santosh Gorakh Patil and another* reported in 2015 (3) Mh.L.J. 922, we deem it expedient that matter be settled by payment of suitable compensation.

11. Looking at the passage of time since 1989 to 2018, we consider a sum of Rs.2,50,000/- (Rs. Two Lakh Fifty Thousand) to be a just amount which will meet with the ends of justice. As such, we direct that the appellant shall pay compensation of Rs.2,50,000/- (Rs. Two Lakh Fifty Thousand)

in lieu of reinstatement and continuity of service to respondent.

12. Amount of compensation is to be deposited within a period of twelve (12) weeks from today. In case of failure to deposit the amount, the amount would carry interest at the rate of 8% per annum to the date of realization of the amount.

13. Letters patent appeal accordingly stands disposed of.

14. Consequently, civil application no. 13343 of 2009, seeking stay to the impugned judgment and order dated 11-11-2009 passed by learned single judge of this court, does not survive and same stands disposed of.

[K.K. SONAWANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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