

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

WRIT PETITION NO.1329 OF 1999

- 1 Shri Arvind G. Chaudhari,  
Sub Divisional Officer,  
Irrigation, Sub Division,  
Dharangaon, Tq.Erandol,  
District Jalgaon.
- 2 The Executive Engineer,  
Jalgaon Irrigation Division,  
District Jalgaon.

...PETITIONERS

-VERSUS-

- 1 Nimba Khushal Patil,  
Age : Major, R/o Bahadurpur,  
Tq.Parola, District Jalgaon.
- 2 The Presiding Officer,  
Labour Court, Jalgaon.  
(Deleted vide today's order)

...RESPONDENTS

...  
Advocate for the Petitioners : Shri D.R.Shelke a/w Smt.Sunita D. Shelke  
Advocate for Respondent 1 : Shri Vijay Y. Patil  
...

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 13<sup>th</sup> June, 2019**

**Oral Judgment :**

- 1 I have heard the submissions of the learned advocates for the  
respective sides and have gone through the record with their assistance.

2           Respondent no.2/ Presiding Officer, Labour Court, is a formal party and therefore, stands deleted from the proceedings.

3           The sole respondent/ workman was the complainant in Complaint (ULP) No.11/1994 filed before the Labour Court alleging oral termination at the hands of the petitioner w.e.f. 13.01.1987. He claimed to have joined the petitioner as a Mustering Assistant on daily wages on 24.01.1980. He was disengaged on 30.04.1984. After a gap of a year, he was given a fresh engagement as a Mustering Assistant on daily wages on 19.03.1985 and he worked upto 12.01.1987. He has thus, put in about 06 years in employment with the petitioner.

4           The learned advocate for the respondent/ workman has strenuously contended that this writ petition is not maintainable. I find that in view of the law laid down by this Court in the matters of *Engineering Employees Union vs. Devidayal Rolling & Refineries Private Limited, 1986 Mh.L.J. 331 : 1986 (2) Bom.C.R. 246* and *Clifford Rebello vs. Hotel Oberoi Towers, (2001) III CLR 805*, it is held that the writ petition directly preferred before the High Court challenging the order or judgment of the Labour Court under the MRTU & PULP Act, 1971 would not be maintainable on account of failure to avail of the statutory remedy of revision under Section 44 of the MRTU & PULP Act, 1971.

5           However, since this petition has been admitted by this Court

on 15.03.1999 and the impugned judgment of the Labour Court has been stayed, it would be unfair to the parties to direct the petitioner to approach the Industrial Court under Section 44, after a passage of 20 years of admission of this petition. As such, without laying down a precedent and by observing that this judgment shall not be cited as a precedent, I am entertaining this petition.

6           The learned advocate for the petitioner/ Irrigation Department strenuously submits that a daily wager working as a Mustering Assistant does not have a right to employment and more so, in view of the fact that the State Government had presented the scheme before the Honourable Supreme Court vide Government Resolution dated 01.12.1995 in Civil Appeal No.15339/1996, there could be no permanency which can be granted to such Mustering Assistant de-hors the Government Resolution dated 01.12.1995.

7           The Honourable Supreme Court (three judges Bench) delivered an order on 02.12.1996 approving the Government Resolution dated 01.12.1995. As a consequence of this, only those persons, who were continuously working as Mustering Assistants upto the cut off date prescribed in the said Government Resolution dated 01.12.1995, which is 31.05.1993, are eligible for the benefits of continued employment. Since the respondent herein was not in employment after January, 1987, he would not be entitled to the benefits of the said Government Resolution.

8           It, however, cannot be ignored that the respondent has worked for about six years upto January, 1987 excluding the gap of one year and is out of employment for the past about 32 years. I deem it appropriate to rely upon the following judgments of the Honourable Supreme Court wherein, it is concluded that the compensation at the rate of Rs.30,000/- to Rs.40,000/- per year of service put in by the employee as a daily wager, would be appropriate and pragmatic in lieu of reinstatement and continuity in service :-

- (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].*

9           As such, this Writ Petition is partly allowed as under :-

- (a) The impugned judgment of the Labour Court dated 07.10.1998 is quashed and set aside.
- (b) The petitioner/ Irrigation Division, Jalgaon shall deposit an amount of Rs.2,40,000/- (Rupees Two Lac Forty Thousand),

at the rate of Rs.40,000/- per year of service, in this Court on or before 30.08.2019. No extension of time would be granted.

- (c) In the event, the said amount is not deposited as directed above, the same shall carry interest at the rate of 6% per annum from the date of the judgment of the Labour Court, which is 07.10.1998, till it's actual deposit and the Executive Engineer of Jalgaon Irrigation Division or the concerned Officer responsible as on date, shall be liable to pay the interest component from his personal salary account and the interest component shall not be paid from the State exchequer.
- (d) The respondent/ workman is at liberty to withdraw the said amount of Rs.2.40 lac without conditions, subject to proper identification and by producing his recent photograph, photocopies of recent address proof and Voter's Identity Card issued by the Election Commission of India.

10 Rule is made partly absolute in the above terms.