

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1260 OF 1999

The Jalgaon Municipal Council,
Jalgaon Through its Chief Officer

..Petitioner

Versus

Shaligram Bhika Wani,
Age major, Occ. Nil,
R/o 338, Navi Peth, Jalgaon.

..Respondent

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Advocate for Respondent : Shri Sangit L.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 06, 2019

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ORAL JUDGMENT:-

1. A last chance was granted to the petitioner on 2.5.2017 to conduct this matter on 7.6.2017. In the Special Drive for Final Hearing of old matters in Vacation, none appeared for the petitioner on 6.5.2019 and 7.5.2019. The matter was posted for this day for passing orders on dismissal.

2. Even today, none appears for the petitioner.

3. I have heard the learned Advocate for the respondent and have gone through the petition paper book. An order passed by this Court dated 5.1.2017 in Writ Petition No.3108 of 1997 involving the

same petitioner / Council (presently Municipal Corporation), in identical set of facts, is also placed on record.

4. I find from the record that the respondent / workman had approached the Labour Court in Reference IDA No.35 of 1994 claiming to have joined service as a daily wager in his capacity as a Cleaner in the Fire Brigade Department in 1988. He claimed to have been orally terminated on 17.2.1993. The Labour Court concluded that he had worked in 1988-89 for 58 days, for 288 days in 1989-90, 287 days in 1990-91, 32 days in 1991-92 and 85 days in 1992-93. By the impugned award dated 3.8.1998, he was granted reinstatement with continuity of service and the prayer for back wages was rejected.

5. Section 25-B of the Industrial Disputes Act defines continuous service. Section 25-F, G and H are attracted if an employee works for 240 days in continuous employment in the 12 calendar months, immediately preceding the date of reference. In the case in hand, 17.2.1993 is the date of reference as it is claimed that he was orally terminated on the said date. As such, the Labour Court drew a conclusion that the workman had worked for more than 240 days in the years 1989-90, 1990-91 and 1991-92.

6. I find from the impugned award that the Labour Court has failed to refer to the principle of law that the law of retrenchment would be applicable if a workman completes 240 days in the 12 calendar months, preceding the date of reference.

7. In view of the above, the Labour Court appears to have fallen in a gross error by concluding that the petitioner admits that he worked for more than 240 days even in the year 1991-92. What is admitted is that he has worked for more than 240 days in 1989-90 and 1990-91.

8. This Court has passed an order on 16.3.1999 admitting the petition and staying the impugned award. In this backdrop, it would be appropriate to follow the law laid down by the Honourable Apex Court in the following matters:-

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].

9. Considering that the respondent has worked for 240 days for two years and is out of employment for last more than 27 years, it would be just and proper to grant compensation to the respondent / workman in the light of the judgments delivered by the Honourable Apex Court, referred to above.

10. As such, this petition is partly allowed. The impugned award dated 3.8.1988, delivered in Reference IDA No.35 of 1994, stands modified. The relief of reinstatement with continuity of service is replaced by directing the petitioner, which is now the Jalgaon City Municipal Corporation, to deposit an amount of Rs.1,00,000/-, at the rate of Rs.50,000/- for each year of service in which the respondent completed 240 days, in this Court, on/or before 15.7.2019. After the amount is deposited the respondent would be at liberty to withdraw the said amount, without conditions, subject to proper identification.

11. In the event the petitioner fails to deposit the said amount as directed, the said amount shall carry interest at the rate of 6 per cent per annum from the date of this order and the said interest component shall be payable from the salary account of the Commissioner of the Jalgaon City Municipal Corporation.

12. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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