

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

WRIT PETITION NO.1442 OF 2003

The Executive Engineer, Minor
Irrigation Division, Latur,
District, Latur

...PETITIONER

VERSUS

Shri Bhim s/o Vishwanath Shinde,
Age 40 years Occu. Nil,
R/o C/o Adv. Shri G. S. Pawar
Mantri Nagar Latur,
Tq. & Dist. Latur.

...RESPONDENT

**WITH
CIVIL APPLICATION NO. 2630 OF 2012 IN WP/1442/2003**

Bhim s/o Vishwanath Shinde,
Aged : 51 years, Occ : Nil,
R/o Gunjarga, Tq. Nilanga,
Dist. Latur.

**...APPLICANT
(ORIG. RESPONDENT)**

VERSUS

1. The Executive Engineer,
Medium Project Latur,
Dist. Latur.

**...NON APPLICANT
(ORIG. PETITIONER)**

...

Advocate for Petitioner : S. K. Adkine
Advocate for the Respondent : Shri B. N. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 08th MAY, 2019.

...

ORAL JUDGMENT :

1. Since this petition is taken up for final hearing in this special drive, the pending Civil Application No. 2630/2012 does not survive and stands disposed off.

2. The Petitioner Minor Irrigation Division is aggrieved by the impugned judgment and award dated 11/10/2002, by which, Reference (IDA) No. 10/1997 has been allowed and the respondent has been granted reinstatement with continuity of service, without back wages.

3. By an order dated 10/04/2003, this Court has admitted the petition and stayed the impugned award.

4. I have heard the learned Advocates for the respective sides.

5. The petitioner has relied upon the judgment of the Honourable Apex Court in the matter of *Executive Engineer*,

(State of Karnataka) V/s. K.Somasetti & ors., 1997 II CLR 2663 and the order passed by this Court dated 05/06/2002 in Writ Petition No. 1049/2002 to support the contention that Irrigation Department is not an industry and therefore, the proceedings initiated by the respondent are not maintainable.

6. I have heard the learned Advocates for the respective sides at length and have gone through the petition paper book with their assistance.

7. There is no dispute that the respondent was working on daily wages as a labourer with the petitioner from 31/03/1984 till 01/09/1984. He put him about 104 days in service. He claims to be a project affected person. A certificate to that effect is placed on record.

8. I find from the record that the petitioner after filing their written statement at Exhibit C-2, had raised the ground that the claim of the workmen was struck by Section 2 (oo) (bb) of the ID Act, 1947. As the contractual engagement came to an end and there was no renewal of contract, the respondent

could not have claimed reinstatement. The ground that the petitioner is not an industry under Section 2(s) of the ID Act, was not raised.

9. Notwithstanding the above, it is obvious that the respondent worked for 104 days and is out of employment from 01/09/1984 till this date, which is a period of about 35 years. The industrial dispute was raised by the respondent in 1997 after 13 years of his disengagement. In this backdrop, the Labour Court could not have allowed the reference and could not have directed reinstatement with continuity in service.

10. The Honourable Apex Court has held in the matter of *K. Somasetty (supra)*, that an Irrigation Department of the State Government is not an industry. This Court has also concluded in the matter of *The Executive Engineer, Solapur Irrigation Division Vs. Shri Appasha Shrimant Dhangapure and another, Writ Petition No. 1049/2002* decided by the order dated 05/06/2002.

11. It is obvious that since the petitioner did not raise a ground that it is not an industry, the Labour Court proceeded to deal with the reference. This Court stayed the impugned award after noting that the respondent had worked for only 104 days and no right would vest in him to claim reinstatement with continuity of service.

12. The learned Advocate for the respondent submits that he is in litigation for the last 22 years. Had the petitioners raised the ground that the irrigation department is not an industry, his reference could have been disallowed on the preliminary point and he would have taken recourse to an alternate remedy as would have been permissible in law. After litigating for 22 years, now the petitioner claims that the irrigation department is not an industry.

13. In view of the above, though this petition deserves to be allowed, I find that a quantified compensation could be paid to the respondent for the time spent in this litigation.

14. As such, this petition is allowed. The impugned

judgment and award dated 17/10/2002 is quashed and set aside. Reference (IDA) No. 10/1997 stands answered in the negative.

15. Rule is made absolute in the above terms.

16. However, considering that the petitioner did not raise the issue of maintainability in 1997 and has raised it after the Labour Court delivered its award, that I deem it appropriate to direct the petitioner to pay an amount of Rs. 25,000/- for the said litigation. The said amount would be deposited by the petitioner in this Court on or before 28/06/2019. The said amount could be withdrawn by the respondent, without conditions.

(RAVINDRA V. GHUGE, J.)

shp/-