

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3386 OF 1998

Maharashtra Veej-Kamgar Sahakari
Pat-Pedhi Ltd., Shyamnagar, Latur.
Through it's Chairman.

... Petitioner

Vs.

Baburao Rangrao Narwate
Age 39 years, Occ. Nil,
r/o Bawechi, Taluka and
District – Latur.

... Respondent

Advocate for the Petitioner : Shri A. V. Hon.

CORAM : RAVINDRA V. GHUGE, J.
Dated : May 6, 2019

ORAL JUDGMENT :-

1. The petitioner management is aggrieved by the judgment and award dated 26.5.1998 delivered by the Labour Court, by which reference (IDA) No. 8 of 1997 was allowed and the termination of the second party workman, who is the respondent herein, with effect from June, 1992 has been set aside and he has been granted reinstatement, continuity and full back wages with effect from June, 1993.

2. Despite this Court having admitted the matter, having granted interim relief only to the extent of staying the back wages and upon issuing notice to the respondent workman, no appearance has been entered despite service of Court notice on rule.

3. I have considered the strenuous submissions of the learned advocate for the petitioner and I have gone through the record available. I have perused the pleadings of the respondent workman as they have been reproduced in the impugned judgment.

4. It is obvious that the workman had claimed to have joined the petitioner first party employer as a watchman on 1.6.1988. It is averred in the statement of claim that he was working since 1.6.1988 till June, 1992. It is also obvious that the date of his oral termination has nowhere been mentioned in the statement of claim, except that a bald statement has been made that he was orally terminated from June, 1992.

5. The petitioner management filed its written statement at Exhibit 'C-9' and took a stand that some construction activity of its building was in progress and the workman was engaged for curing purposes so as to water the constructed portions with effect from 1.10.1988 on daily wages. He had his own agricultural land and therefore, he voluntarily stopped reporting for duties. Even the management has made a bald statement in its written statement that the respondent had voluntarily abandoned services, without mentioning the date.

6. The report reveals that the workman examined himself at Exhibit 'O-5' . The management did not cross examine the workman, in as much as, the management did not lead any oral or documentary

evidence.

7. The respondent had produced a photostat copy of his appointment order which was granted Exhibit 'U-5/1'. The name of the respondent was entered in the category of employee as a watchman in the yearly reports of the management for the period 1988-89 and 1990-91. The Labour Court, therefore, concluded that the respondent had proved that he was working as a watchman from 1.6.1988 till June, 1992.

8. The respondent had issued a notice for production of documents to the management calling upon it to produce its muster roll-cum-wage register for the period 1988-92. The Labour Court directed such production. Yet the management did not produce the record and hence an adverse inference was drawn.

9. Learned advocate for the petitioner management submits that the reference case before the Labour Court was barred by the law of limitation. I do not find that such submissions are well founded for the reason that an Industrial dispute with regard to termination, discharge, dismissal or retrenchment is considered to be a deemed reference and a deemed industrial dispute under section 2A of the Industrial Disputes Act, 1947. No limitation is prescribed, though in such reference cases, the length of the period post severing of employer – employee relationship till the date of raising of industrial dispute, is considered

when it comes to the grant of back wages.

10. It is, therefore, obvious from the record that, on the one hand, the respondent relied on the photostat copy of his appointment order dated 1.6.1988 and on the other hand, there was no evidence as regards working continuously and completing 240 days in continuous employment as is required under section 25-B and section 25-F of the Industrial Disputes Act, 1947. However, the petitioner management chose not to produce the record. If the respondent was not continuously working with the management, it should have produced the muster roll-cum-wage register keeping in view the principle “Humans may lie but documents will not lie”. The annual report before the Labour Court indicated the name of the respondent in its list of employees for a period of about 3 years. Per contra, if the management had produced its records, it could have established before the Labour Court the exact period of work put in by the employee.

11. It is categorically stated that after June, 1992, the respondent was not in employment and he did not report for duties even after the impugned award was delivered on 26.5.1998. So also, it is seen from record that an application seeking benefits under Section 17-B of the Industrial Disputes Act, 1947, was not filed by the respondent before this Court.

12. In view of the above, it appears that the respondent

employee was in employment for four years and is out of employment for the last 27 years. In this back drop, the Hon'ble Apex Court has delivered judgments in the following cases :

- (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]
- (d) Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327]

In all these cases, the Hon'ble Apex Court considered a similar situation of employees having put in short periods in service and being out of employment for long periods like 15 years or 20 years or even more. In the instant case, the respondent is out of employment for the past 27 years, notwithstanding the fact that this Court did not stay the direction of reinstatement and continuity in service.

13. In view of the above, I deem it appropriate to follow the law laid down by the Apex Court in the above referred four cases.

14. As such, this petition is partly allowed. The impugned award dated 26.5.1998 stands modified with the following directions:

(a) The petitioner shall pay the amount of Rs.50,000/- per year of service put in by the respondent, thereby shall pay a total amount of Rs.2,00,000/- to the respondent by depositing the said amount in this Court, on / or before 1.7.2019. I am issuing this direction keeping in view the law laid down by the Hon'ble Apex Court of quantifying

compensation at the rate of Rs.40,000/- to Rs.50,000/- per year of service put in by a workman, in lieu of reinstatement, continuity and back wages.

(b) After the said amount is deposited in this Court, by the petitioner, the registry shall issue a specific notice to the respondent to withdraw the said amount of Rs.2,00,000/- as quantified compensation.

(c) If the respondent, after service of Court notice, does not withdraw the said amount for a period of 60 days from the date of the service of Court notice, the said amount, along with accumulated interest, shall stand donated to the Government Medical Hospital at Aurangabad for the treatment of poor patients.

15. Rule is made partly absolute in the above terms

(RAVINDRA V. GHUGE, J.)

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