

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2632 OF 2002

Godawari Marathwada Patbhandare
Vikas Mahamandal, through the
Sub Divisional Engineer,
Right Side Canal, Rahata,
Tq. Kopargaon, Dist. Ahmednagar. ..Petitioner

Versus

Somnath Kashinath Ghumare
Age 49 years, Occ. Nil.,
R/o Somthane, Tq. Sinner,
District Nasik. ..Respondent

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Advocate for Petitioners : Shri B N Patil
Advocate for Respondent : Shri S T Shelke

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 07, 2019
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ORAL JUDGMENT:-

1. The petitioner / Corporation is aggrieved by the judgment and award dated 20.11.2001, vide which, Reference IDA No. 43 of 1992 has been partly allowed. The termination of the respondent / workman w.e.f. 1.11.1989 has been set aside and he has been granted reinstatement with continuity of service, though without backwages.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. This Court has admitted this petition by order dated 29.7.2002 and has specifically refused interim relief to the petitioner / Corporation. Learned Advocate for the petitioner informs that the respondent was, therefore, reinstated in service and he has been continued in employment during the pendency of this petition.

4. Learned Advocate for the workman submits that the respondent / workman would attain the age of superannuation on 30.4.2023.

5. Though the learned Advocate for the Corporation has strenuously criticized the impugned award, I find, primarily, two significant conclusions of the Labour Court as being sustainable. Firstly, that the respondent was working with the petitioner from 7.7.1987 till 11.1.1989 and secondly, that the conditions of service under the Kalelkar Settlement are applicable to the petitioner / establishment.

6. In the above backdrop, had this Court not granted any relief to the respondent / workman, it would have been apparent that he had worked for about 18 months and as a consequence of which, he would have been entitled to quantified compensation in lieu of

reinstatement and continuity in service, in the light of 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].

However, since the respondent has been reinstated in employment on 18.10.2004 and is in continuous employment since then, it would be unjust to unsettle him from employment after put in 14 years of employment.

7. I, however, deem it appropriate to entertain this petition only to the extent of the benefits granted to the respondent by the impugned award. For the said purpose, the significant factors are recapitulated as under:-

- (a) The respondent worked from 7.7.1987 to 11.1.1989, a period of 18 months.

(b) From 11.1.1989, he is not in employment till his reinstatement on 18.10.2004, a period of 16 years.

(c) He was thus out of employment for 16 years and yet he has been granted continuity of service by the Labour Court, in the face of the law laid down by the Honourable Apex Court in the above referred four cases.

8. Learned Advocate for the petitioner / Corporation submits that, for a person, who has worked for 18 months followed by an interruption in service for 16 years, getting the benefits of gratuity for such 16 years, would be an unnecessary burden upon the tax payer of this country.

9. In my view, it would be too much for asking that an employee who has worked for 18 months, would get the benefit of continuity of service for 16 years without being in employment and who has been reinstated by the petitioner under the threat of Contempt Petition No. 44 of 2004.

10. I, therefore, find that the submissions of the learned Advocate for the petitioner to be sustainable for depriving the respondent of continuity of service from 11.1.1989 till 18.10.2004 for all purposes.

11. Learned Advocate for the respondent submits, on instructions

from the respondent who is present in the Court, that he may not be deprived of continuity as he was in litigation from 1992 onwards and that he is willing to waive the gratuity amount till November 2001. He clarifies that he can be deprived of gratuity amount till November 2001 and would be eligible for gratuity from December 2001 till his superannuation. He, however, prays for considering the continuity of service notionally for computing his qualifying service period for pensionary benefits, from 7.7.1987 till his superannuation. I find that the above said issue can be resolved in view of the statement made..

12. As such, this petition is partly allowed. The impugned award dated 20.11.2001 shall stand modified as under:-

(A) The respondent / workman shall be deemed to be in employment from 7.7.1987 with continuity.

(B) He would not claim gratuity for the period 7.7.1987 till November 2001 as per his statement so recorded.

(C) He would be eligible for gratuity from December 2001 till his superannuation or as the case may be.

(D) His qualifying service for pensionary and retiral benefits would be considered from 7.7.1987 till his superannuation or as the case may be.

(E) The petitioner shall forward the proposal of the

respondent and all similarly situated daily wagers for regularization to the competent authority, in view of the applicability of the Kalelkar Settlement and the respondent would, therefore, be eligible for such benefits as may be permissible under the Kalelkar Settlement and/or the Rules applicable, with all monetary benefits as are permissible under the Kalelkar Settlement.

(F) The decision on the above stated proposal shall be taken as expeditiously as possible and preferably on/or before 30.11.2019.

(G) Needless to state, the respondent / workman would not be entitled for backwages till 17.10.2004.

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

(RAVINDRA V. GHUGE, J.)

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