

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6110 OF 1999

The Chief Officer,
Nagar Palika, Kallamb,
Dist : Osmanabad

– PETITIONER

VERSUS

1. Radhakisan Pandurang Bartakke,
Age-Major, Occu-Service,
R/o Near Vidya Bhavan High School,
Kallam, Dist : Osmanabad

2. The Labour Court,
Solapur (**Dismissed**)

– RESPONDENTS

Mr.B.R.Sontakke Patil, Advocate for the petitioner.
Respondent No.2 dismissed vide order dated 22/10/2001.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/06/2019

ORAL JUDGMENT :

1. On 07/05/2019, when this matter was listed in the special Vacation Sitting for taking up old matters, all the advocates representing the respective sides were absent. None had appeared even on 08/05/2017 and 09/05/2017 when the matter was taken up in a special drive for final hearing.

2. Today, none appears for the sole respondent.

3. I have heard the submissions of the learned Advocate for the petitioner at length. I have gone through the petition paper book with his assistance.

4. The issue before the Labour Court was a claim by the respondent filed u/s 33(C)(2) of the I.D.Act in Application (IDA) No.95/1986. He had claimed to have been working as 'Upnakedar' from 19/05/1970. He continued as such till 1989. Though he was appointed as a "Choukidar" w.e.f. 16/04/1963, a specific order was issued thereby handing over the charge of 'Upnakedar' to him. Since he was paid the wages admissible to a Choukidar, which was lesser than the work performed by him as 'Upnakedar', he has sought recovery of money due from the employee u/s 33(C)(2).

5. The learned Advocate for the petitioner has strenuously contended that though there was specific appointment order calling upon the respondent to work as 'Upnakedar', he had actually never been performed the said duty. He was not qualified to be appointed as an 'Upnakedar'. The then President of the Municipal Council, Kallamb had issued an order on 19/05/1970 directing the respondent to work as 'Upnakedar' in the Octroi Department. The

said appointment order was illegal. There is no evidence on the basis of which the Labour Court could have ordered payment of difference of wages vide the impugned judgment dated 04/08/1998.

6. This Court had passed an order on 23/03/2000 directing the petitioner to deposit the amount assessed by the Labour Court Pursuant thereto, an amount of Rs.34,093/- was deposited in this Court. By order dated 02/08/2001, this petition was admitted and interim relief was refused to the petitioner as the workman had retired. By the order dated 13/01/2004 passed in CA No.8631/2003, the respondent was permitted to withdraw the amount of Rs.34,093/-. The record reveals that the respondent/workman received the said amount through cheque payment on 23/02/2004.

7. It is obvious from the analysis of the evidence of the Labour Court in the impugned judgment that the respondent/workman was issued with an order to work for the Octroi Department as 'Upnakedar'. The said order was not by way of promotion, in as much as, the issue before the Labour Court was not with regard to a claim for permanency by the said workman.

8. Issue is only as regards the respondent having worked on a higher position and had therefore claimed the difference in the payment of wages which he had received and which were admissible to an 'Upnakedar'.

9. The petitioner had entered a *purshis* before the Labour Court indicating that it did not desire to lead any evidence. After perusing the record placed before the Labour Court vide the list of documents Exh.U-19, the Labour Court concluded that the claimant had worked as an 'Upnakedar' for a period of about 19 years and the minor difference in wages was an amount of Rs.34,093/-.

10. Considering the above, I do not find any reason to cause an interference in the impugned judgment, which does not appear to be perverse or erroneous or likely to cause gross injustice to the petitioner.

11. In view of the above, this petition is dismissed. Rule is discharged.

(Ravindra V.Ghuge, J.)