

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

WRIT PETITION NO. 4261 OF 2006

1) The Range Forest Officer,
Chalisgaon, Vanyajiv Abhay
Aranya, Chalisgaon,
Dist. Jalgaon.

2) Dy. Conservator of Forest
Vanyajiv Abhay Aranya,
Aurangabad Forest Dv.
Aurangabad.

...PETITIONERS

VERSUS

Khandesh Van Shramik Sanghatana
Amalner, Trade Union Centre
Amalner, Dist. Jalgaon

...RESPONDENT

...

Advocate for the Petitioners : Smt.Kalpalata Patil -
Bharaswadkar
Advocate for Respondent No. 1 : Shri V. Y. Patil

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 14th FEBRUARY, 2019.

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ORAL JUDGMENT :

1. I have heard the learned Advocates for the respective sides at length.

2. On 01/08/2008, when this petition was considered and the learned Advocates for the respective sides were heard, this Court has passed the following order :-

"1. This is a petition by forest department raising challenge to the order passed by the Labour court which has been confirmed by Industrial court in a revision presented by the petitioners by order dt. 27-01-2006.

2. Total eight employees approached through the labour union seeking relief of reinstatement in service as well as complaining for unfair labour practice at the instance of employer. Trial court after recording evidence found favour with the respondent herein and directed reinstatement of 8 employees with continuity in service and payment of 25% backwages from the date of termination i.e. 1-9-1998 till their reinstatement.

3. Labour court has interfered with the order mainly on the ground that while retrenching the employees, the employer did not pay retrenchment compensation. It is specific finding recorded by the Labour court that there is no violation of provisions of Section 25(f) of the Act as the case has not been made out by the employees that juniors have been retained while directing retrenchment of senior employees. The fact remains that the petitioners who were junior in seniority list were retrenched on account of non-availability of work under the scheme. In

the event of failure by the employer to offer payment of retrenchment compensation, the employer can be asked to deposit the amount alongwith compensation. However, order in respect of dispensing with the services of employees cannot be faulted on the ground of failure to offer retrenchment compensation. In this view of the matter, the petitioners are directed to deposit an amount of Rs. 80,000/- in this court (Rs. 10,000/- in respect of each employee) within a period of eight weeks from today.

. Rule.

. Interim relief in terms of prayer clause 'C' on condition of petitioners depositing Rs. 80,000/- in this court within a period of eight weeks from today."

3. With their assistance, I have gone through the record available.

4. There is no dispute that there were ten employees, who were listed in Annexure 'A' to complaint (ULP) No. 148/1998 that was filed before the Labour Court, Jalgaon. Finally, when the Labour Court allowed the complaint, partly, by its judgment dated 07/04/2003, two workers out of the ten namely Dharma Yamaji Ubale and Baburao Kalu Nikam were

held to be not entitled to any relief. Only eight persons were held entitled for reinstatement and continuity in service with 25 % back wages.

5. When the petitioners approached the Industrial Court by preferring Revision Application (ULP) No. 82/2003 under Section 44 of the MRTU and PULP Act, 1971, the Industrial Court delivered a judgment on 27/01/2006 and concluded that the judgment of the Labour Court is fair and proper.

6. It cannot be ignored that the petitioners are the forest department and the issue as to whether, the forest department is an industry or not is said to be referred to a Larger Bench before the Honourable Apex Court and the said issue is yet to be decided.

7. Notwithstanding the above, these eight persons, who are represented by their Union, were working on daily wages with the said department. They were said to be taken on daily wages under a scheme. Each one of them had contended a particular date from which they were said to be in employment

as daily wagers. Each of them claimed to have completed 240 days in continuous employment with this petition. Names of two persons viz. Shaikh Salim Shaikh Bura and Himmat Parbat Nagare were said to have been retained in employment and that they were junior to these eight workers.

8. The Labour Court relied upon an attendance chart submitted by the petitioners at Exhibit C-20. All of these eight persons were said to have completed 240 days in one calendar year preceding the date of reference as is expected under Sections 25B and 25F of the Industrial Disputes Act, 1947. The Labour Court, however, concluded that each of them were given notice for retrenchment under Section 25F. It was then concluded that their termination was bad in law.

9. The Labour Court then relied upon the judgment of this Court in the matter of *Haribhau Gaman Waghchaure Vs. State of Maharashtra and another*, 2002 I CLR 383 and on the judgment of the Honourable Apex Court in the matter of *Chief Conservator of Forests and anr. Vs. Jagannath Maruti Kondhare*, 1996 I CLR 680 and concluded that the Forest

Department is an industry.

10. The issue is as to whether, such daily wagers could be reinstated in employment in the absence of vacant posts. The law is now crystalized that a daily wager cannot be reinstated on a non-existing post presuming that the work as a daily wager could not be said to be associated with a particular post. So also, in state instrumentalities, it has been concluded that merely because a worker has completed 240 days in continuous employment, would not entitle him to benefits of continued work with an order of reinstatement in service.

11. While passing the interim order on 01/08/2008, this Court has already concluded that the reasons assigned in the notice of retrenchment would indicate that disengagement of these employees cannot be faulted on the ground of failure to offer retrenchment compensation.

12. The learned Advocate for the workers and the Union submits that three persons namely Ramchandra Patil, Dharma Yamaji Ubale and Baburao Kalu Nikam are even today

continued in employment as daily wagers. If these three persons are today in employment, this Court has no reason to draw any conclusion about they being in employment.

13. The State of Maharashtra has a scheme, by which, such daily wagers working for decades, can be considered for regularization. The learned Advocate for the workers submits that barring Ramchandra Patil, out of the eight persons who have succeeded before the Labour Court, the rest of the seven are not in employment for more than 10 years. He, however, submits that they can be considered for grant of compensation in the light of the law laid down by the Honourable Apex Court in the matters of :-

(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]**; and

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

14. The learned Advocate for the petitioners department submits that the said department has no funds and huge amount of compensation cannot be granted.

15. Since this Court has concluded at the interim stage, I have no reason to draw a conclusion that these daily wagers can have a right to be in continued employment merely because they completed 240 days in continuous service in a calendar year preceding the date of reference.

16. As such, these eight persons, who are covered in the operative part of the order of the Labour Court, would be at liberty to withdraw the amounts of Rs. 10,000/- alongwith accrued interest in equal shares by following the due procedure applicable for withdrawal of such amounts. *Insofar* as the request of these workers to seek employment as like Ramchandra Patil, Dharma Ubale and Baburao Nikam, is concerned, the decision can be left to the petitioners department since the department would have to consider whether any work on daily wages is available to be offered to these seven persons. The seven persons are at liberty to make

a request to the petitioners department which can consider as to whether, any temporary work is available in the event of such work being available, they can also be allotted work at par with Ramchandra Patil, Dharma Ubale and Baburao Nikam. The petitioners would endeavour to maintain parity unless there is any other legal impediment.

17. The impugned orders, therefore, stand modified in terms of the interim orders passed by this Court and this judgment.

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

(RAVINDRA V. GHUGE, J.)

shp/-