

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.770 OF 2006
(The State of Maharashtra Vs. Ramesh Maganrao Darekar)

Mr.N.T.Bhagat, AGP for the petitioner.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/04/2019

PER COURT :

1. The petitioner/State is aggrieved by the judgment and award dated 15/12/2004, delivered by the Labour Court in Reference (IDA) No.97/1993 by which the termination of the respondent/workman w.e.f. 01/02/1992 was declared illegal and set aside. He was granted reinstatement in service with continuity and 25% back wages.

2. Learned Advocate for the workman submits on the basis of the documents placed on record from page No.44 onwards that he was reinstated in employment in 2011. He was also paid his last drawn wages u/s 17-B of the Industrial Disputes Act from 2009, pursuant to the order of this Court dated 12/10/2009 passed on the Civil Application No.7506/2009. His proposal for regularization has also

been forwarded to the competent authority. He is still continued in employment as a watchman.

3. Learned Advocate for the workman submits on instructions that he would waive the entire back wages till the payment of his last drawn wages commenced u/s 17-B. He has been granted continuity in service. He is in his early 50's and may have another 5 or 6 years for retirement. He would pursue the remedy available for seeking regularization independently.

4. Learned AGP for the petitioner submits that the respondent was working intermittently from 01/01/1986 till about 31/01/1992. The petitioner had taken a stand that he was never terminated from employment and that he had never worked with the petitioners. It is then admitted that he was working on hand receipts meaning thereby that he used to be paid his daily wages on vouchers.

5. I find from the record that the petitioner did not produce any documentary evidence before the Labour Court. A chart was produced at Exh.C-8 indicating the number of days worked by the respondent.

6. In the above backdrop, it cannot be overlooked that the petitioner has reinstated the respondent in 2011 and was paying last drawn wages from 2009. He is admittedly in employment today despite the rival contentions of the parties, the workman claiming to be in regular employment and the petitioners claiming to be paying him wages on hand receipts.

7. Considering the above and keeping in view that the petitioners have also forwarded the proposal of the respondent for regularization, that I deem it appropriate to rely upon the order of the Hon'ble Apex Court dated 09/07/2018 delivered in the matter of **Ku.Pushpa Ramdas Zatake Vs. The Divisional Controller, MSRTC** in Civil Appeal No.6171/2018. The order of the Hon'ble Apex Court reads as under :-

" Leave granted.

Having heard learned counsel for the parties and having perused the record of the case, we are inclined to set aside that part of the order which gives direction to the Labour Court to decide the matter afresh on merits.

In our opinion, such direction to remand the case to the Labour Court in the facts of this case was not called for.

It is not in dispute that the appellant was reinstated in service pursuant to the original order of the labour court and she

has been working on the post since last eighteen years.

In the light of these admitted factual scenario appearing in the case, we consider it just and proper to give quietus to the case.

In these circumstances, we direct that the appellant would not be entitled to claim any backwages from the respondents and nor the respondents would be entitled to pass any adverse order against the petitioner insofar as the charge in question is concerned.

With this modification in the impugned order, this appeal stands disposed of."

8. In view of the above, I find that this is a fit case for being given a quietus. The petition filed by the petitioners is therefore disposed off. Rule is discharged.

9. Needless to state, since this petition had arisen out of the order of the Labour Court in relation to the termination of the respondent, he would be at liberty to take recourse to a remedy as may be permissible in Law in so far as his claim for regularization is concerned. It is made clear that all contentions of the litigating sides as regards whether a proposal for regularization of the petitioner was sent, whether the proposal is turned down or whether the said proposal is still under consideration, are kept open and the same

would not amount to an impediment for the workman to claim regularization.

(Ravindra V.Ghuge, J.)