

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

WRIT PETITION NO.12089 OF 2018

**BARKAT ALI SHAIKH PASHA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for the Petitioner : Shri Khandelwal Rajesh K.
AGP for Respondent 1 : Shri S.R.Yadav
Advocate for Respondent 2 : Shri S.W.Munde

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th December, 2019

Per Court:

1 On 29.10.2018, I had passed the following order :-

"1 *The petitioner is aggrieved by the judgment and award dated 24.04.2018 passed by the Labour Court, Aurangabad by which reference (IDA) No.25/2016 has been answered partly in the affirmative. The oral termination of the petitioner dated 16.12.1995 is set aside. In lieu of reinstatement, compensation of Rs.30,000/- has been granted.*

2 *I find the following factors emerging from the record:-*

- a) *The petitioner proved before the Labour Court that he was working from 29.12.1986 till 15.12.1995.*
- b) *He raised an industrial dispute in 2016 and the reference came to be registered before the Labour Court on 04.11.2016, which is after about 21 years from the date of his disengagement.*
- c) *The petitioner contends that he had initially preferred O.A. No.992/1996 before the Maharashtra Administrative Tribunal seeking regularization in service, which includes reinstatement as he was already disengaged from 16.12.1995.*

- d) *The original application is said to be disposed of by order dated 22.07.2003.*
- e) *Thereafter, the petitioner has raised an industrial dispute after 13 years.*

3 *I find that the petitioner ought to place on record the order of the MAT dated 22.07.2003.*

4 *Learned Advocate for the petitioner submits that he would require at least four weeks time to place the copy of the Judgment dated 22.07.2003 on record.*

5 *Learned AGP appears on behalf of the respondent.*

6 *Stand over to 11.12.2018.*

7 *The issue of maintainability of the reference after 21 years is kept open, inasmuch as, this Court would consider this petition only after going through the order dated 22.07.2003 passed by the MAT which the petitioner shall place on record on or before 30.11.2018."*

2 Today, the learned advocate for the petitioner has placed before me, the certified copy of the order 22.07.2003 passed by the learned Division Bench of the Maharashtra Administrative Tribunal, Aurangabad Bench, in Original Application No.992/1996. The certified copy of the said order dated 22.07.2003 is taken on record and marked as "X" for identification.

3 I find from the order passed by the learned Maharashtra Administrative Tribunal that the elder brother of the petitioner is already in Government service and hence, he is not entitled to the concession flowing under clause 6 of the Government circular dated 10.12.1981 and therefore, he is also not eligible under the Government Resolution dated 14.04.1981.

4 Another factor that emerges from the order of the learned Maharashtra Administrative Tribunal is that the petitioner is held to be working between 1986 to 1996 on Employment Guarantee Scheme (EGS). The law is now well settled, right upto the Honourable Supreme Court, that the employees working under the EGS are deployed under a benevolent scheme and after working under the EGS, they cannot approach the Labour Court by filing the complaints alleging unfair labour practice. Following are some of the orders/ judgments delivered by this Court holding that the ULP complaint filed by the employee working under the EGS is untenable :-

- (a) *Subhash Narayan Ahirrao vs. Deputy Engineer, P.W.D., Sub Division*, 1993 FLR (Vol.66) 353.
- (b) *Manabhau Damu Khairnar and others vs. State of Maharashtra and others*, 1995 (II) CLR 649
- (c) Writ Petition No.847/1996 with connected matters, *State of Maharashtra and others vs. Kakasaheb Bhausaheb Khandagale and others*, decided on 18.08.2001 and 30.08.2001.
- (d) Writ Petition No.703/1997 (*Zilla Parishad, Ahmednagar vs. Namdeo Natha Pawar*) decided vide judgment delivered on 15.10.1999.
- (e) *Chief Executive Officer, Zilla Parishad, Ahmednagar vs. Daulat*

Narsingrao Deshmukh and others, 2001 (2) Mh.L.J. 543.

5 Though the reference case would not be maintainable, in view of the law referred to hereinabove, the State Government or respondent No.2 have not challenged said reference case. Therefore, though I am dismissing this Writ Petition, I am clarifying that I have not dealt with the maintainability of the reference case. If the first party employer in Reference (IDA) No.25/2016 challenges the said award, the issue of maintainability of the reference case, in the light of the above law, would be gone into.

6 This Writ Petition is, accordingly, dismissed.

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(RAVINDRA V. GHUGE, J.)