

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

**CIVIL APPLICATION NO.11018 OF 2019
IN WP/362/2003**

**THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
DASHRATH MHATARJI HIVARALE**

...

**AGP for the Applicants : Shri S.R.Yadav
Advocate for the Respondent : Shri A S Shelke**

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th September, 2019

Per Court:

1 The learned AGP points out that this court had considered Writ Petition No.362/2003 filed by the applicants, by the judgment dated 08.05.2019 and had passed the following order below paragraph 9 :-

"9. *In view of the above, an equitable order can be passed. This petition is, therefore, partly allowed with the following directions :-*

[a] *If the respondent has been reinstated in service by the petitioners pursuant to the judgment of the Labour Court, he would be entitled for notional continuity of service from 01/01/1984 till his future date of superannuation for the purposes of calculating his qualifying service for pensionary benefits. He would not be entitled for back wages from 01/04/1988 till the date of his reinstatement by applying the principle of "no work-no wages". He would also not be entitled for gratuity for the period 01/04/1988 till the date of his reinstatement and would be entitled for gratuity only for the period 01/01/1984 to 01/04/1988 and from the*

date of his reinstatement till the future date of his superannuation.

- [b] In view of the above contingency, the petitioners would forward the proposal of the respondent alongwith similarly situated daily rated watchmen, for regularization to the appropriate authorities. Such proposal shall be forwarded within 2 months from today and the same shall be considered and decided within 4 months from the date of receipt of such proposal. Needless to state, these proposals would be considered by the petitioners in the light of the 2 Government Resolutions dated 31/01/1996 and 16/10/2012.
- [c] In case this respondent has not been reinstated in service pursuant to the impugned award, it would mean that he has put in 4 years and 3 months in employment from 01/01/1984 to 01/04/1988. He would be out of employment for 31 years till today. Therefore, the Law laid down by the Hon'ble Apex Court in the above referred 4 cases would be applicable to the case of the respondent. In this situation, the petitioners shall deposit an amount of Rs.2,15,000/- in this Court towards quantified compensation, on or before 31/07/2019, failing which, the said amount would carry interest @ 6% p.a. from the date of the award till the amount is deposited and in which case, the interest component shall be paid from the salary account of the Divisional Forest Officer and the said interest amount would not be paid from the State exchequer.
- [d] In the above contingency, after the amount is deposited, the respondent would be at liberty to withdraw the said amount within 90 days, from the date of depositing of the amount, by tendering an application with a recent photograph and identity proof, duly identified by the learned Advocate. If the amount is not withdrawn within 90 days, the same shall stand donated for the treatment of poor patients to the Ghati Hospital and the Nazir Department shall forward the said amount to the said dispensary."

workman passed away on 25.07.2006. As such, there is no question of sending his proposal for seeking regularization.

3 The learned advocate for the respondent (deceased employee) submits that his son has also passed away and the surviving widowed daughter-in-law Smt.Shobabai Gautam Hiwrale and the other legal heirs may be taken on record on oral instructions.

4 In view of the above and on oral instructions of the learned advocate for the deceased employee, the widowed daughter-in-law Smt.Shobabai Gautam Hiwrale and the other legal heirs shall be brought on record in the civil application as well as in the decided writ petition forthwith. The learned advocate for the deceased employee causes an appearance on behalf of the legal heirs brought on record.

5 In view of the above, the direction issued by this court in clauses (a), (b) and (c) under paragraph 9 shall stand modified and replaced by the following directions :-

(a) In the event, the added non applicant widow receives the succession certificate or heirship certificate from the appropriate court, she would be at liberty to move an application in this court for receiving the amount of Rs.2.50 lac deposited by the petitioners in this court, along with accrued interest.

(b) Needless to state, while seeking the succession certificate or

heirship certificate, the amount deposited in this court shall be brought to the notice of the Trial Court.

- (c) The Registry of this Court shall invest the said amount of Rs.2.50 lac in any nationalized bank at Aurangabad initially for a period of one year. Consequentially, the direction in clause (d) below paragraph 9 shall stand substituted by this direction.

kps

(RAVINDRA V. GHUGE, J.)