

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

WRIT PETITION NO.11420 OF 2018

**JYOTI ASHOK HORSHIL
VERSUS
THE COMMISSIONER MUNICIPAL CORPORATION AURANGABAD**

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Advocate for the Petitioner : Shri Khandelwal Rajesh K.

Advocate for the Respondent : Shri Vaidya Ameet R.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th December, 2019

Per Court:

1 On 15.10.2018, I had passed the following order :-

- "1. *The petitioner is aggrieved by the impugned judgment and order dated 24/04/2018 delivered by the II Labour Court, Aurangabad, by which, his Ref. IDA No. 129/2011 is partly allowed, but instead of granting reinstatement, compensation is granted for an amount of Rs. 50,000/-.*
2. *Grievance is that the petitioner was working with the respondent/corporation for almost 9 years and a paltry amount has been granted as compensation.*
3. *The learned Advocate places reliance upon the following judgments of the Honourable Supreme Court:-*
 - (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].

4. *Issue notice to the respondent corporation returnable on 07/12/2018.*
5. *The parties to note that this matter is likely to be heard finally at admission stage."*

2 The learned advocate appearing on behalf of the respondent Municipal Corporation has strenuously opposed this petition. He submits that though the petitioner may appear to have worked on daily wages for 8 to 9 years, he has been working intermittently and therefore, it cannot be said that he has worked continuously. He further submits that the Labour Court has rightly calculated the compensation to be paid to the petitioner as per Section 25-F(b) of the Industrial Disputes Act, 1947. The law has undergone a change and merely because Section 25-F is not complied with, it would not attract automatic reinstatement in service, continuity in service and full back wages.

3 I do find that the submissions of the learned advocate for the respondent Corporation to the extent of the non compliance of Section 25-F, to be appropriate. The law has indeed undergone a change and merely because the law of retrenchment is not complied with, would not automatically entitle the employee to reinstatement, continuity in service and full back wages with a State instrumentality.

4 However, the judgments delivered by the Honourable Supreme Court in the above reproduced order, would indicate that when

reinstatement in service is impractical and would amount to foisting an employee on the State Instrumentality, quantified compensation could be the relief to be granted and unless the post is vacant, there cannot be an order of reinstatement on a non-existing post.

5 It is also settled that while quantifying the compensation in view of the above judgments, the capacity of the employer has to be taken into account. The Honourable Supreme Court has, thus, laid down the law that the compensation of about Rs.30,000/- to Rs.40,000/- as in 2013, per year of service put in by the employee would be appropriate compensation. With the passage of almost six years, the compensation, in my view, can be slightly enhanced. While doing so, I am conscious that the respondent is a Municipal Corporation, which is in losses and cannot be equated with a private employer.

6 Considering the above, this Writ Petition is partly allowed. The compensation payable to the petitioner shall be quantified at Rs.35,000/- (Rupees Thirty Five Thousand) per year of service. He has put in about nine years in employment as a daily wager in between 1998 to 2008. As such, the respondent Municipal Corporation shall pay compensation for an amount of Rs.35,000/- X 09 years i.e. Rs.3,15,000/- (Rupees Three Lakhs Fifteen Thousand) as quantified compensation inclusive of all benefits available to the petitioner in the course of her employment and on account of her non employment. This amount of

Rs.3,15,000/- shall be paid to the petitioner directly within a period of TWELVE WEEKS from today, failing which, the said amount shall carry interest at the rate of 6% per annum from April, 2018, when the Labour Court delivered the award.

7 It is made clear that the petitioner shall now be precluded from raising any issue in connection with her employment or non employment before any forum, Tribunal, Authority or Court, which is likely to cast any financial burden, directly or indirectly, on the respondent/ Municipal Corporation.

kps

(RAVINDRA V. GHUGE, J.)