

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2598 OF 2017

Shri Ramdas Shravan Jadhav	...	Petitioner
Versus		
The Secretary,		
Public Works Department		
And Others	...	Respondents

.....
Mr. Neel G. Helekar a/w Mr. Kanhaiya S. Yadav for the Petitioner.
Mr. A.P. Vnarse, AGP for the State.

CORAM : S.C. GUPTE, J.

DATE : 13 DECEMBER 2019

P. C. :

. Heard learned Counsel for the parties.,

2 This writ petition challenges an order passed by the Labour Court at Nasik on a complaint of unfair labour practice under Section 28(1) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“Act”). The Petitioner, who was the original complainant, submitted in his complaint that he was working as a male majoor from 1983 to 1986 in Public Works Department of the State at Manmad under the administration of the Respondent Executive Engineer, Malegaon, District Nasik. He submitted that he had completed 240 days in a calendar year of his

service. It was his grievance that, in the premises, the termination of his employment without compliance with the provisions of Section 25(F) of the Industrial Disputes Act, 1947 was illegal and amounted to unfair legal practice on the part of the Respondent State. The Labour Court was of the view that the service pattern adopted in the case of the complainant employee showed that artificial gaps in the service period were intermittently given so as to avoid continuous service. The court was of the view, on perusal of the material on record, that the complainant had worked with the Respondent continuously for more than 240 days in twelve months immediately preceding and that his termination was without following due procedure of law. The court held that even if the complainant had worked on a temporary basis and his pay was in the nature was of daily wage, without showing that there was no work available or without showing that the work allotted to him was of a fixed contractual period, the Respondent could not have terminated the complainant employee without following law. The court accordingly held that the Respondent had committed unfair labour practice within the meaning of Item 1(b) of Schedule IV of the Act. This finding was not challenged by the Respondent State and has attained finality.

3 The grievance of the Petitioner employee in the present petition is that he was entitled, in the facts of the case, to the relief of reinstatement and back wages. He submitted that the Labour Court, despite having found in his favour, restricted the relief to compensation of Rs.50,000/-. Learned Counsel submits that this relief

must be substituted by reinstatement with or without back wages.

4 Though the labour court accepted the grievance in the complaint, when it came relief to be given to the complainant employee, the court considered a catena of decisions of recent times, where the courts have laid down that even if an order of retrenchment in violation of Section 25(F) of the Industrial Disputes Act was to be set aside, reinstatement is not to be ordered automatically. Particularly, in case of workmen engaged on daily wages, who had completed 240 days of work in a year preceding the date of termination, reinstatement with back wages was not found to be proper by various courts and instead compensation was awarded. In view of this trend of judicial pronouncements and considering the fact that the complainant employee could not be absorbed in permanent service by the reason of not having completed five years of continuous service (which was the norm for, and policy of, the Respondent State) the labour court was of the view that the complainant was not entitled to be reinstated with wages and instead, compensation could be awarded as adequate relief.

5 The assessment of the matter by the Labour Court does not admit of any interference in the writ jurisdiction of this court. As the Supreme Court has noted in the case of **Asst. Engineer, Rajasthan Dev Corp Vs. Gitam Singh**¹, though reinstatement in case of a wrongful dismissal was a normal rule, there could be cases where it

1 2013 LawSuit(SC) 96, Date of Decision 31 January 2013

might not be expedient to follow that normal rule. Though reinstatement of daily wagers was ordered by courts, as observed in the case of **Manager, Reserve Bank of India, Bangalore Vs. S. Mani**², there is no such principle of universal application that adjudicators in industrial disputes are compelled to order reinstatement with continuity of service or back wages. The court held that the tribunals had the discretion in the matter and grant of relief depended on the peculiar fact situation in a particular case. In our case, the complainant employee had worked intermittently only for a period of three years. The policy of the State, which is reflected in the Government Resolution of 24 November 2000, was for regularization of services of employees, who had completed five years of service on daily wages in accordance with Kalelkar Award. It is an admitted position that the complainant did not qualify for such regularization. In the premises, the reliefs granted by the Labour Court in the present case cannot be termed either as perverse or unreasonable. If the Labour Court has duly exercised its discretion and such exercise does not suffer from any perversity or unreasonableness, there is nothing for this court to interfere with in its writ jurisdiction.

6 Learned Counsel for the Petitioner alternatively submits that the compensation ought to be enhanced from Rs.50,000/- to a more respectable sum. The labour court has given the basis for arriving at the particular compensation. It has considered the complainant employee's admission in his cross examination that after his

termination, he was earning Rs.75/- per day as wages. Considering the earning capacity of the complainant during the past disputed period of service and considering his admission as above, the court was of the view that it would be proper and reasonable to award him compensation of Rs.50,000/-. Once again, this appears to be a fair and reasonable assessment and does not admit of any interference either under Article 226 or Article 227 of the Constitution of India.

7 Learned Counsel for the Petitioner, in further alternative, submits that there should at least be an award of interest on the compensation awarded by the court. Learned Counsel submits that the impugned order was passed on 17 December 2011 and his client has not seen the colour of money so far.

8 On the facts of this case, I am of the considered view that though the quantum of compensation awarded by the Labour Court does not appear to be improper, the demand of interest on the amount of compensation appears to be just and reasonable. So long as the compensation is not paid and the State has had use of the money and correspondingly, there is a deprivation on the part of the successful employee, there is no reason why interest should not have been ordered. Having regard to the facts and circumstances of the case, this court is of the view that interest at the rate of 9 per cent would be an adequate compensation. Accordingly, the impugned order of the Labour Court is sustained save and except an order for interest on the compensation awarded at the rate of 9 per cent per annum

from 17 December 2011 till payment or realization. The amount shall be paid by the Respondent State to the Petitioner within three months, failing which, the amount shall carry interest at the rate of 12 per cent per annum from the expiry of three months and till payment or realization.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed
by Rajesh V.
Chittewan
Date: 2020.01.10
17:17:34 +0530