

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2870 OF 2009

The State of Maharashtra and anr.	.. Petitioners
Vs.	
Shri Nivrutti Kashinath Ahire	.. Respondent

Mrs.Vaishali Nimbalkar, AGP for the Petitioners.
Ms.Sanchita Thakur (Amicus Curiae), for Respondent.
Mr.Rajendra A. Kapse – Assistant Conservator of Forest,
Manmad is present.

CORAM : M.S.KARNIK, J.

DATE : 18th APRIL, 2019

P.C. :

. Heard learned AGP for the petitioners and learned
Counsel for the respondent. I had requested Ms.Sanchita
Thakur to appear and make submissions on behalf of the
respondent as the respondent is unrepresented throughout.

2. The State of Maharashtra, by this Petition filed under
Articles 226 & 227 of the Constitution of India, has challenged

the order passed by the Labour Court, Nashik in Complaint (ULP) No. 227 of 2001 with other connected Complaints on 31/03/2005 which was upheld by the Industrial Court in Revision Application (ULP) Nos. 60 of 2005 to the extent of reinstatement without back-wages. The order of the Labour Court was modified by the Industrial Court in Revision and back-wages to the extent of 50% was granted in favour of the respondent.

3. The petitioners filed present Petition in this Court challenging the order passed by the Industrial Court. On 17/07/2008, this Court was pleased admit this Petition. Stay to the order of the Industrial Court was however refused.

4. During the pendency of the Petition, the petitioners by G.R. dated 16/10/2012 framed a scheme for absorption of similar situate employees like the respondent.

5. After this Court refused to stay the order of the

Industrial Court, the petitioners called upon the respondent to join work. In additional affidavit dated 18/04/2019, it is stated that the respondent worked during the period 2008 -09 for 26 days and in 2009-10 for 130 days. It is stated that the respondent remained absent and despite sending letters asking him to join duties, he worked intermittently and left the work. It is pointed out that the respondent is therefore not entitled for wages for intervening period.

6. In the affidavit, it is further stated that as per G.Rs. dated 16/10/2012 and 18/05/2018, respondent is fulfilling the terms and conditions, therefore he was eligible for absorption. However, the respondent has attained the age of superannuation on 01/06/2018 and therefore no order absorbing him could be issued. The petitioners have issued orders of absorption in respect of similar situate employees in terms of the G.Rs. dated 16/10/2012 & 18/05/2018. In view of the superannuation of the respondent on 01/06/2018, according to the learned AGP, question of issuing any order of

absorption in respect of the respondent did not arise.

7. Most of the employees who are covered by the G.Rs. dated 16/10/2012 & 18/05/2018 have accepted the orders of the absorption and even filed undertaking to the effect that they are agreeable to the terms on which the order of absorption is made.

8. From the affidavit, it appears that the respondent has worked intermittently. Pursuant to the interim order dated 17/07/2008 this Court refused to stay the order of the Industrial Court. As stated earlier, the respondent is unrepresented. On the basis of the available record & at my request, learned Counsel Ms.Sanchita Thakur made submissions on behalf of the respondent. She would submit that the respondent could not be absorbed only because there was delay in issuing orders of absorption in terms of the G.Rs. dated 16/10/2012 & 18/05/2018. She would submit that the petitioners have categorically stated that but for superannuation of respondent,

he was otherwise eligible for absorption as per the G.Rs.

9. In my opinion, in the peculiar facts of this case and taking into consideration that most of the similar situate employees have accepted the orders of the absorption and filed undertaking that they agree with the terms and conditions set out in the G.Rs. dated 16/10/2012 & 18/05/2018, following order would meet the ends of justice.

ORDER

(i) The respondent is eligible for absorption in terms of G.Rs. dated 16/10/2012 & 18/05/2018.

(ii) The respondent is superannuated on 01/06/2008. The respondent is eligible for the benefit of the G.Rs. dated 16/10/2012 & 18/05/2018. He may be treated as in service till 01/06/2018 and may be granted the benefit of G.Rs. dated 16/10/2012 & 18/05/2018 as conferred on similar situate employees.

(iii) It is made clear that the respondent will not be eligible for back-wages during this period.

(iv) The impugned order passed by the Courts below stand substituted by the above directions.

10. I place on record my appreciation for the able assistance rendered by Ms.Sanchita Thakur who appeared for the respondent at my request.

11. Writ Petition is disposed of in the above terms. Rule partly made absolute with no costs.

(M.S.KARNIK, J.)