

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2398 OF 2001

Executive Engineer,]
Irrigation Department,]
Tarabai Park, Sinchan Bhavan,]
District Kolhapur] Petitioner

Versus

Shikandar Kashim Jamadar,]
Age : Major,]
R/at Post – Shirgaon (Pungaon),]
Taluka : Radhanagari,]
District Kolhapur.] Respondent

Mrs. M.S. Bane, A.G.P., for the Petitioner–State.

Mr. Ajit Hodage, I/by Mr. P.G. Karande, for the Respondent.

CORAM : A.K. MENON, J.

RESERVED ON : 5TH MARCH, 2019.

PRONOUNCED ON : 3RD MAY, 2019.

JUDGMENT :

1. This writ petition is filed by the Executive Engineer, Irrigation Department of the State challenging the judgment and order dated 10th

February 2000 passed by the Industrial Court, Kolhapur in Revision Application (ULP) No.210 of 1991. The revision application was directed against an order dated 28th December 1990 passed by the Labour Court, Kolhapur in Complaint (ULP) No.158 of 1986, whereby the complaint seeking reinstatement in service has been dismissed.

2. Being aggrieved, the complainant filed a revision application, under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (*"MRTU & PULP Act"*). The Industrial Court, by the impugned judgment, allowed the revision application, set aside the order of the Labour Court and allowed the complaint declaring that the petitioner had engaged in unfair labour practices, directed the petitioner to cease and desist from continuing with the impugned unfair labour practices. The petitioner was also directed to reinstate the respondent in service at any place having work of irrigation project with continuity of service, but without back wages.

3. The challenge in this petition and as canvassed by Ms. Bane, the learned A.G.P., is that the respondent had not completed 240 days of continuous service. There were breaks after 30, 60 and 90 days, respectively, and that his services came to be terminated on 30th June 1982 and was thereafter not in service. She further contended that the respondent had

reached the age of superannuation and cannot be reinstated and therefore, no back wages can be granted. She submitted that in the writ petition it was submitted that the impugned order of the Industrial Court can be stayed and since now the respondent had superannuated, there is no question of any reinstatement. She has invited my attention to the appointment orders at page Nos.41 to 61 of the record and proceedings, which have been called for, and submitted that the respondent is not entitled to claim permanency and reinstatement. My attention is invited to a chart appearing on page No.81 of the record and proceedings showing respondent's presence, the deposition/examination-in-chief of the respondent and cross-examination in support of her contentions that the respondent was not entitled to get appointment as a permanent employee. She submitted that the respondent at the relevant time was engaged as a Patkari since 1st December 1981, thereafter as a Chowkidar (Watchman) at Bhatanwadi Irrigation Branch. His services were then terminated on 30th June 1986.

4. His main grievance was that two acres of agricultural land belonging to him was acquired by the State for Tulsi Dam Project, at which time he was assured of the permanent job, as per the policy of the Government. The Collector had in 1983 confirmed this; however, without any enquiry being conducted, his services were terminated and contrary to the provisions of Section 25 of the Industrial Disputes Act, 1947. He had contended that no notice was given to him and no wages in lieu of notice period was paid. The

respondent had contended and as canvassed by Mr.Hodage that he was a project affected person. In 1972, his land was taken away and as a part of the compensation, he was appointed in the year 1981. The complaint filed by him was incorrectly dismissed and that is how the revision application came to be filed and it was allowed.

5. The learned A.G.P. Submitted that the respondent had incorrectly contended that three persons junior to him were retained in services and that the rule of “last come first go” in terminating the services of the employees was not followed. She contended that the Tulsi Dam work came to an end in the rainy season and thereafter the services of the respondent were no longer required. However, there appears to be no dispute that the land belonging to the respondent was acquired for the Tulsi Dam Project. She contended that since the respondent was temporary, there was no question of continuing the appointment of the respondent. She further submitted that the contention of the respondent that persons junior to him were retained in service were class-3 employees working in some other department of the Government and therefore the seniority list was different, could not be a matter for consideration, because the respondent claims as a class-4 employee. She further submitted that the “last come first go” principle could not be applied in the case of the respondent.

6. It is further contended that the Industrial Court has failed to consider an inspection report, which would reveal that the respondent has worked for 254 days in 1982, 313 days in 1983, 151 days in 1984, 91 days in 1985 and 108 days in 1986. Ms. Bane, therefore, submitted that in the three years preceding 1987, the respondent has not worked for 240 days. There were many gaps and breaks.

7. In that view of the matter, the Labour Court had correctly held that the proceedings under Section 25 could not be adopted and there was no occasion to issue separate notice and offering him one month's salary in lieu thereof. It was further contended that the work of the Tulsi Dam Project having been completed, petitioner had no work to offer to the respondent and therefore, his services could not be continued. She has denied that there is any case of victimization, as contended. On this basis, the petitioner seeks that the order impugned be set aside. Learned A.G.P. has relied upon a decision of the Supreme Court in *Executive Engineer, Zilla Parishad, Engineering Division Vs. Digambara Rao*¹, in support of her contention. One of the contentions of Ms. Bane was that, although back wages had not been granted, the respondent has not challenged that part of the order of the Industrial Court.

8. Mr. Hodage, learned counsel appearing on behalf of the respondent, has opposed this petition on the basis that the respondent is a project affected

1 2004 AIR (SC) 4839

person. In 1972, his land was taken away and as a part of the compensation, he was appointed in the year 1981. The complaint filed by him was incorrectly dismissed and that is how the revision application came to be filed and it was allowed. He invited my attention to the records and proceedings and in particular page No.29 thereof. Mr. Hodage submitted that the State has issued a certificate dated 17th March 1972 and by virtue of the said certificate, the respondent is entitled to a permanent job. It is submitted that although the respondent has superannuated, he is entitled to monetary benefits, because his superannuation occasioned during the pendency of this petition and the stay operating. He submitted that the decision in the case of *Digambara Rao (supra)* is not at all applicable to the present case, because the respondent has been deprived of his land and promised employment in lieu thereof.

9. In *Digambara Rao*, the Supreme Court was considering a case of claim for regularization on daily wages under a specific plea and the court held that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularization. The respondents in that case were not appointed in accordance with the recruitment rules. There was no direction for regularization of services. In that case, it was held that since they were appointed only under a scheme and the scheme having been concluded, there was no question of continuing services under the said scheme. Mr. Hodage

submitted that in the instant case, the promise of employment given to the respondent was not subject to any scheme, but two acres of land was taken over by the Government for the purpose of Tulsi Dam Project and in consideration thereof, the respondent was promised by the Collector a permanent job by the State vide a Collector's communication dated 17th April 1983. It was the part of the policy of the Government and the respondent's services could not be terminated on the basis that Tulsi Dam Project had come to an end.

10. In this behalf, having heard learned counsel for the parties and having gone through the pleadings, I must observe that the petitioner admits that the respondent was deprived of two acres of land. They do not dispute the fact that the State had promised employment in terms of the Collector's communication dated 17th April 1983. It is also seen that the petitioner admits that the respondent had worked for 254 days in 1982 and 313 days in 1983. The reason for disputing completion of 240 days continuous service is baseless. The Labour Court had misconstrued this aspect of the case. Although recognized a fact that the respondent has deprived of his land, the Labour Court has proceeded to adjudicate the complaint on the basis of a plain reading of the order, which shows that the term of the complainant's services was to expire on 30th March 1986, which were extended till 30th June 1986 and thereafter came to an end by lapse of time. The order does not consider

the fact that in the first year itself, respondent had completed more than 240 days of continuous services. Merely because there were some artificial breaks, it cannot be held against the respondent, since these are the breaks, which were imposed upon him by the petitioner. Despite finding that the respondent had worked for 254 days in the year 1982, the Labour Court has observed that the evidence does not show that he worked for 240 days in a year. In fact, there is no challenge to the fact that in the first two years, the respondent had worked for more than 240 days. The breaks, if any, within these 254 days and 313 days are not specified.

11. The Labour Court considered the fact that the respondent was deprived of his land and that it was the duty of the Government to provide persons such as the respondent with a permanent source of income and that this has not been done by the Government, in the face of these, the observations that the respondent should be considered for employment on a priority basis, as and when work is available, is in confidential terms, considering the fact that the State was bound to compensate him in the manner contemplated in the Collector's letter dated 17th April 1983.

12. The revisional court has considered these facts and found that the impugned order of the Labour Court was not correct. The revisional court thereafter considered the inspection report, which shows that the respondent had worked for 254 days in 1982 and 313 days in 1983 and for lesser

number of days in the subsequent years. It correctly holds that the observations of the Labour Court, in paragraph No.10 of the judgment, to the effect that the respondent had not completed 240 days of continuous service in a year, was incorrect. Furthermore, the circular dated 17th April 1983 issued by the Collector in relation to the employment, the revisional court found it in favour of the respondent, since he was deprived of the land and the compensation offered by way of employment being denied to the respondent.

13. In this behalf, Mr. Hodage has relied upon the decision of the Supreme Court in *H.D. Singh Vs. Reserve Bank of India and others*², wherein the employee had worked for more than 240 days in a year, but when the dispute arose, the employer denied completion of 240 days of continuous service in a year. However, the employer failed to produce the attendance register to controvert the workman's claim. In *H.D. Singh (supra)*, the employee concerned was appointed as a Tikka Mazdoor, which required him to help the Examiners of Coins and Notes. He was selected on daily wages, but although he was reporting to the Bank regularly, no work was given to him on some days. He had to wait till noon and was then told that no work is available. In such case, in 1974, he was given only four days work. In 1975, he was given work for 154 days and in 1976, he was given work for 105 days. When he joined employment, he has not completed his matriculation,

2 (1985) 4 SCC 201

which he did in the subsequent years. But then, he was informed that he could not continue as Tikka Mazdoor since he has passed his matriculation exam and then told that he has concealed his educational qualification and therefore his services could be terminated. The said termination was challenged and the Tribunal held against the employee. The Supreme Court has reversed the decision of the Tribunal and observed that striking-off the name of the appellant first amounting to retrenchment. The appeal was allowed.

14. The aforesaid decision does not assist the respondent because in the case of *H.D. Singh (supra)*, the job was of a permanent nature but the availability of the work to be performed was apparently uncertain. The case of the respondent is that the respondent was sought to be deprived of the benefit of his land, which was admittedly agricultural land. He was thus deprived of his source of livelihood, when the State acquired the land on the promise of giving him an employment.

15. During the course of hearing, the original record was perused and it appears that the Collector and Deputy Director of Resettlement (Land), Kolhapur, Tulsi Project, Kolhapur District has issued a certificate dated 17th March 1972 in favour of the respondent, as a result of which the agricultural land has been acquired. Although there is no evidence of the respondent having been resettled and the written arguments submitted on behalf of the

petitioner before the Labour Court, Kolhapur at Exhibit-19 in the original record reflects the petitioner's stand as on that date. While the respondent was appointed by an order dated 3rd March 1986, due to non-availability of work, his services were terminated and he was not given further appointment. It is also contended that in the rainy season, they were unable to provide any employment.

16. Perusal of the record however reveals that the respondent has been compensated for the land acquired. He has also being informed that the job would be temporary and would end periodically. In his cross-examination, he has admitted that the other two employees were class-3 employees and thus I am unable to accept the plea of unfair labour practice on that count. Furthermore, the respondent was appointed specifically for the Tulsi Dam Project, which came to an end. There was nothing before the revisional court to establish that the job is of perennial nature. The Industrial Court has proceeded only on the basis of completion of 240 days. The ratio in *Digambara Rao (supra)* would apply.

17. The crucial letter dated 17th April, 1983 reveals that it is not respondent- specific. It is a communication which requires highest priority to be given to project affected persons and their dependents in Government service. They were required to be given relaxation for three years in registration with the Employment Exchange. with the employment exchange.

A period of three years relaxation is provided in this respect. The Government was making efforts to grant priority to project affected persons. Considering this it is not possible to hold that the respondent was being wrongfully deprived of his due. The record also indicates that petitioners had offered him employment on daily wages which he had declined. Considering the fact that he was already compensated in the land that was required. The acquisition of the land cannot be a springboard for the respondent to claim permanent employment only on the basis of completion of 240 days . The respondent cannot expect State largesse.

18. In the result, I am of the view that the petition succeeds , I am of the view that the impugned order cannot be faulted. In the result, I pass the following order :-

- (i) The Judgment and Order dated 10th February 2000 is hereby quashed and set aside.
- (ii) Rule made absolute in the above terms.
- (iii) No costs.

(A.K. MENON, J.)