

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12843 OF 2018

Deputy Conservator of Forest .. Petitioners
Kolhapur through Range Forest Office

Vs.

Krishnat Balu Rabade .. Respondent

Mrs. M. S. Bane, AGP for the Petitioner.

Mr. Yuvraj G. for the Respondent.

CORAM : A.K. MENON, J.

DATED : 30th JANUARY, 2019.

P.C. :

1. The challenge in this writ petition is to the order dated 30th August, 2016 passed in Complaint (ULP) No. 07 of 2012 whereby the petitioner was directed to reinstate the respondent with 100% back wages. In Revision the order of the Labour Court was upheld by the Industrial Court order dated 13th October, 2017 but modified by reducing the amount of back wages and restricting it to 20%. The petitioner- Dy.Conservator of forest was aggrieved by both these orders.

2. The facts in brief are that the respondent was employed with the office of the Deputy Conservator of Forest, Kolhapur. It is alleged that he was a daily wage worker and had not completed 240 days continuous service. On

the other hand it was the case of the respondent that he was employed continuously from 1995. On or about 26th November, 2005 in the Radhangari taluka a tiger was found dead. The respondent was called upon to guard the dead animal. The claws of the animal were allegedly found missing and therefore an offence was registered against him, his son and two other relatives of Forest Guard. Later it transpired that the Criminal Case No. 46 of 2007 came to be tried. The respondent was acquitted on 22nd July, 2009.

3. A complaint came to be filed on the basis of Unfair Labour Practices under Item 1(a), (b), (d), (e), (f) and (g) of Schedule IV of the MRTU & PULP Act. The trial Court found in favour of the respondent and directed reinstatement with full back wages. The Court in revision had framed 3 issues and held against the petitioner and found no error apparently on the face of the record that calls for interference. The order in revision records that no charge sheet was even issued nor any enquiry held prior to termination of the services on 22nd December, 2005.

4. The learned AGP submitted that he was daily wage earner and due to non-availability of work, no work was given to him and his services was terminated. Having considered the submissions I have examined the impugned orders which record concurrent findings to the effect that the respondent had worked for more than 240 days during 1995 to 2005 and

his services were orally terminated on 22nd December, 2015. No hearing was given to him. No enquiry was conducted. The petitioner further contended that he was a daily wage earner on temporary basis and due to non availability of work he did not complete 240 days and hence there was no occasion to reinstate him or pay him back wages.

5. The order and revision were found in favour of the respondent and records that despite several opportunities that the petitioner had, they did not defend the complaint. They remained absent on various occasion but were present on 12th February, 2016 and 26th February, 2016 but omitted to cross examine the complainant/respondent who had filed his affidavit of evidence. In fact no application was filed by the petitioner to cross examine the respondent. The only reason for not defending the complaint effectively was that the employees of the petitioner were busy with plantation work continuously and therefore the matter was not contested on merits. This contention has also been rejected and did not find favour with revisional court which found that the procedure adopted in the trial court could not be faulted.

6. Thus it was found that without following the mandatory provisions of law, services of the respondent had been terminated and in that view of the matter the respondent was ordered to be reinstated. However, the amount of back wages was reduced to 20% instead of 100%. The respondent has not

challenged this order of reducing the back wages. Thus the respondent was entitled to 20% back wages. Nothing in the impugned orders have been shown to me that is perverse or otherwise illegal. The petitioner had complete opportunity to establish its case which it had failed to do. It is made clear that the issue of regularization was not canvassed or arise in this case

7. In the circumstances it is not possible to accept the contention of the learned AGP at this stage that he was merely a casual worker who had not completed 240 days. The evidence is overwhelmingly against the petitioner. In my view the orders cannot be assailed on this count. Accordingly the challenge fails. I pass the following order :

- (i) The writ petition is dismissed.
- (ii) No costs.

(A.K. MENON,J.)