

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4373/2014

(CONSERVATOR OF FOREST, AMRAVATI & OTHERS VERSUS ASHOK R. INGLE & ANOTHER)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.M. Balpande, A.G.P. for petitioners.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 12, 2019.

The learned Assistant Government Pleader was heard on 11.07.2019. To grant one opportunity to the respondent no.1, the matter was kept today. Today also, there is no appearance on behalf of the respondent no.1. Accordingly, the correctness of the award dated 30.09.2013 passed by the Labour Court is being considered.

It is the case of the respondent no.1 that he was working as a Watchman since the year 1984 at the Range Forest Office. He worked continuously till 31.10.1990 after which his services were orally terminated. According to the respondent no.1 he was getting Rs.19.50 Ps. per day as wages and that his signature was being taken on the muster roll. Since he had worked continuously for a period of more than 240 days and as his services were put to an end without following the provisions of Sections 25G and 25H of the Industrial Disputes Act, 1947 (for short, 'the said Act'), he was entitled to reinstatement. Accordingly, an approach notice was given by him and the dispute was referred to the Additional Commissioner of Labour. On account of there being a failure to arrive at any conciliation the proceedings were referred to the Labour Court by way of reference. The employer filed its

written statement and took the stand that the respondent no.1 was engaged temporarily on daily wages. It was their case that work was assigned as and when available. Hence there was no question of termination of his services. After considering the evidence on record alongwith various documents, the Labour Court recorded a finding that two other employees who were junior in service to the respondent no.1 were continued in service with the Department and that their services were regularized. It was further found that one months notice/retrenchment compensation was not paid to the respondent no.1. Hence, after considering the fact that there was some delay in raising the grievance, the Labour Court held the respondent no.1 not entitled for back wages. Accordingly, by the impugned award the order of termination was set aside and the petitioners were directed to reinstate the respondent no.1 in service but without back wages. Being aggrieved the petitioner has challenged the aforesaid judgment.

Shri A.M. Balpande, learned Assistant Government Pleader for the petitioners submitted that there was insufficient material on record to hold that the respondent no.1 had completed 240 days of continuous service. The respondent no.1 did not place on record any evidence to indicate that he had worked continuously from 1984 for a period of six years. On the contrary, the respondent no.1 was being given work as and when available. He referred to the evidence of the respondent no.1 as well as the witnesses examined by the petitioner in that regard. It was thus submitted that the impugned award was liable to be set aside. Without prejudice to the aforesaid submission, learned Assistant Government Pleader submitted that after the order was passed in the award this Court had stayed its execution. As a result, since last many years services of the respondent no.1 have not been engaged.

With the assistance of learned Assistant Government Pleader, I have perused the documents on record as well as the evidence led by the parties. It can be seen that to prove the aspect that the respondent no.1 had discharged continuous service of more than 240 days, he filed an application below Exhibit 21 seeking production of documents by the Department. The documents such as muster roll and vouchers were not placed on record. According to the Department, the said muster rolls were destroyed. However there was no acknowledgment produced to indicate that such records were indeed destroyed. Moreover, in the cross-examination of the witness examined by the Department, it was admitted that muster roll was a permanent record. In the light of this aspect, the learned Judge of the Labour Court proceeded to draw an adverse inference against the petitioners. It is found that the learned Judge was justified in drawing such adverse inference especially as a notice to produce documents had been given by the respondent no.1 and the reason for its non-production could not be substantiated. Another relevant aspect is with regard to the admission of the petitioners' witness that two other employees Raju Gavai and Mangal Chavan who were junior to the respondent no.1 were continued in service by virtue of regularization of their services. On that basis, a finding was recorded that the provisions of Section 25G of the said Act had been violated. This finding is also based on the material on record. It is thus found that the Labour Court rightly arrived at a conclusion that while terminating the services of the respondent no.1, the provisions of Sections 25G and 25H had been violated.

Having found that there was violation of the aforesaid statutory provisions, the normal relief would be to direct reinstatement in service. It is however to be noted that the services of the respondent no.1 were engaged as a daily wager. The order of termination is dated 31.10.1990. The award passed by the Labour Court was stayed by this Court on 22.08.2014 which indicates that the actual service of the respondent no.1 was for a period of six years. In *Incharge Officer & Another Versus Shankar Shetty* [(2010) 9 SCC 126] as well as *Asst.Engineer, Rajasthan Dev. Corp. & Another Versus Gitam Singh* [2013(5) Mh.L.J. 1], it has been held by the Hon'ble Supreme Court that while considering a case of breach of provisions of Sections 25F and 25G of the said Act with regard to a daily wager, monetary compensation in lieu of reinstatement could be the appropriate relief. It is found that the ratio of these decisions applies to the facts of the present case. Thus considering the period of service of about six years rendered by the respondent no.1 but as a daily wager coupled with the fact that back wages were already denied by the Labour Court, I am inclined to award monetary compensation to the respondent no.1 in lieu of the relief of reinstatement.

Accordingly, the order passed by the Labour Court on 30.09.2013 is partly modified. Instead of the direction of reinstatement with continuity of service, the respondent no.1 is held entitled to monetary compensation of Rs.50,000/- (Rupees Fifty Thousand). The amount of compensation be paid within a period of three months from today. Thereafter the said amount shall carry interest at the rate of 6% per annum till realization.

The Writ Petition is disposed of in aforesaid terms. No costs.

JUDGE

APTE