

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5298 OF 2018

Fulsing s/o Sakru Jadhav

...Versus...

Ministry of Forest and Environment, through its Secretary, Kamgar and Udhog Vibhag,
State of Maharashtra, Mantralaya, Mumbai and others

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

Court's or Judge's orders

Shri A.V. Lokhande, Counsel for petitioner.
Shri H.D. Dubey, A.G.P. for respondent No.1
Shri V.P. Maldhure, Counsel for respondent Nos. 2 & 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/02/2020

1. The present petition, is decided along with Writ Petition No.2003/2018, Writ Petition No. 2007/2018 and Writ Petition No. 5297/2018.

2. In the instant case by an award dated 24/05/2017, in reference IDA No.8 of 2015 passed by the Labour Court, Yavatmal, the reference under Section 10(1)(c) and 12(5) of the Industrial Disputes Act 1947, has been dismissed on account of delay and laches and on account of the Government Resolution Dated 16.10.2012 not being applicable to the petitioner.

3. The undisputed position in the present matter is that the petitioner was appointed as a daily wager with the respondent No.3. His engagement was terminated on 29/01/2001, w.e.f., 01/02/2001, which was never challenged by the petitioner by institution of any proceedings in that regard, resultant to which the termination became final.

4. The Government of Maharashtra in the Department of Forest, on 16/10/2012, issued a Government Resolution, whereby, persons in employment, who were employed for 240 days in a year for a continuous period of 5 years or with a break, during the period 01/11/1994 to 30/06/2004, were directed to be considered for employment. The petitioner, in light of this Government Resolution, issued an approach notice in pursuance thereof, as the conciliation failed, the matter was referred to the Labour Court.

5. The learned Labour Court by impugned order dated 24/05/2017, dismissed the reference, being aggrieved by which, the present petition has been filed.

6. Mr. Lokhande, learned Counsel for the petitioner, vehemently attacks the order of the Labour Court on all grounds. He submits, that in light of the eligibility of the petitioner vis-a-vis the Government Resolution dated 16/10/2012, the petitioner was entitled to the same treatment, as was afforded to other persons, with whom the Department is claimed to have entered into the settlement, though those employees were from a different area.

7. He further placed his reliance upon the order of this Court in Writ Petition No.715/2017, dated 25/02/2019 (The Divisional Manager, Forest Development Corporation Limited, Nagpur and others Vs The Member, Industrial Court (Maharashtra), Bhandara Bench, Bhandara and others) and other connected matters. He also relies upon the judgment in the case of Prabhakar Vs Joint Director, Sericulture Department and another, reported in (2015) 15 SCC 1,

and specifically para 42.3 to contend, that if the workman has been able to give satisfactory explanation for the delay and laches and if the issue is still alive, the delay would not come in his way because of the reason that law of limitation has no application.

8. He further submits, without prejudice to the above plea, that even presuming, that any proceedings at the behest of the petitioner were tenable, the delay from 2001 to 2016 of nearly 15 years, is one which is not explained in any manner whatsoever.

9. He submits, that the Government Resolution dated 16/10/2012, was clearly not applicable to the case of the petitioner, for the reason, that the said Government Resolution, was only applicable to those persons who were in employment as on 30/06/2004 and not otherwise. He submits, that since admittedly, the petitioner was not in employment on that day, he cannot have the benefit of the Government Resolution dated 16/10/2012 and the inclusion of the name of the petitioner, in any list, would be of no significance whatsoever. He places his reliance on the judgment of this Court in the case of *Executive Engineer, Public Works Department, Wardha Vs Namdeo Govindrao Nandurkar*, reported in *2011 (4) Mh.L.J. 33* and specifically paragraph No.19 to buttress his submissions.

10. Having heard the learned Counsel for the parties, and perused the record with their assistance, the following position emerges.

11. The contention raised by learned Counsel for the petitioner, that the impugned order, insofar as it rejects the claim of the petitioner, on account of delay and laches for the reason that the Government Resolution dated 16/10/2012, gave a fresh cause of action to the petitioner, is required to be mentioned to be rejected for the reason that except for the above G.R., which is not applicable to the petitioner, as discussed hereinafter, no other reason whatsoever is forthcoming from the side of the petitioner, to explain the delay.

12. The reliance placed by the learned Counsel for the petitioner on **Prabhakar** (Supra), does not come to his assistance in any manner whatsoever, as it has to be demonstrated, that there was a satisfactory explanation, coupled with the position that the issue was still alive, which is no longer extant in the present matter. In fact, paragraph No.44 of the judgment in **Prabhakar** (Supra), clearly mandates, that the words “at any time” as used in Section 10(1) of the Industrial Development Act, though do not admit of any limitation in making an order of reference, however the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed.

13. In fact, the dictum of this Court in the case of **Namdeo Nandurkar** (Supra), categorically mandates that any delay, has to be reasonably explained to the satisfaction of the authorities, which in the present case, has not been done.

14. That takes me to the plea, that under the Government

Resolution dated 16/10/2012, the petitioner was eligible to have been considered for appointment. In this context, it is axiomatic to state that the services of the petitioner, stood terminated on 29/01/2001 w.e.f. 01/02/2001, which was never challenged as a result of which the petitioner, no longer remained in the employment of the respondents. A perusal of the Government Resolution dated 16/10/2012, demonstrates that the purpose for which the same was brought into effect, was that persons were working/in employment on daily wages from years together and therefore, it was necessary, to regularize their services. The Government Resolution dated 16/10/2012, categorically uses the expression “regularization”, which naturally would mean the regularization of the employment of a person in service and not otherwise. In fact, the language of the Government Resolution goes further and it specifically mandates, that only those persons, who were in employment between the period 01/11/1994 to 30/06/2004 were entitled for regularization, provided they complied with the other conditions as mentioned therein, for which purpose, 5089 additional posts were being created. The services of the petitioner already stood terminated on 29/1/2001, w.e.f., 1/2/2001 and therefore he was not in employment as on 30/6/2004, due to which the Government Resolution dated 16/10/2012, is clearly inapplicable to the petitioner.

15. The reliance by learned Counsel for petitioner, on the order dated 25/02/2019, in Writ Petition No. 715/2017 and connected matters is misplaced as the said order clearly considers the situation that the Government Resolution dated 16/10/2012

was applicable to those employees who were in employment during the period from 2/11/1994 to 30/6/2004 whereas in the instant matter, as already observed, the employment of the petitioner already stood terminated on 1/2/2001 and therefore the Government Resolution dated 16/10/2012 would not be applicable to the petitioner.

16. In that light of the matter, I do not see any merit in the writ petition. The same is therefore, dismissed with no order as to costs.

JUDGE