

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

WRIT PETITION NO.5381/2018

Satish Wamanrao Lewate

..V/s..

Sarpanch, Gram Panchayat, Shirasgaon (Kasba) and another

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

Court's or Judge's orders

Dr. (Mrs.) Renuka S. Sirpurkar, Advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 28.1.2020.

1] The petitioner is aggrieved by the judgment and award dated 29.7.2017 delivered by the Labour Court, vide which, the Reference (IDA) No.11/2011 filed by the petitioner second party workman, has been partly answered in the affirmative and compensation of Rs.10,000/- in lieu of reinstatement in service has been granted.

2] Despite service of notice of this Court, for final disposal at admission stage, upon the respondent original first party employer, no appearance has been entered, either in person or through an Advocate.

3] This petition is pending for final disposal since September, 2018. It is in this backdrop, that I have considered the extensive submissions of the learned

Advocate for the petitioner.

4] The learned Advocate for the petitioner places reliance upon the following judgments:-

(1) *Ajaypal Singh V/s. Haryana Warehousing Corporation* [(2015) 6 SCC 321],

(2) *R.M. Yellatti V/s. Asstt. Executive Engineer* [(2006) 1 SCC 106],

(3) *Anoop Sharma V/s. Executive Engineer Public Health Division No.1, Panipat (Haryana)* [(2010) 5 SCC 497],

(4) *Director, Fisheries Terminal Department V/s. Bhikubhai Meghajibhai Chavda* [(2010) 1 SCC 47],

(5) *Asst. Engineer, Rajasthan Development Corporation & Anr. V/s. Gitam Singh* [2013 I CLR 817] and

(6) *Assistant Charity Commissioner and 1 V/s. Makwana Natwarlal Devji and 1* [2018(3) CLR 488].

5] It is an admitted position that the petitioner was engaged as a daily wager in the water supply activity of the Grampanchayat on 19.2.2006 as per the Resolution No.10/2001, dated 13.9.2006. He claimed to have worked continuously till 15.9.2008. He was orally terminated on 16.9.2008.

6] The Labour Court has considered the oral and documentary evidence adduced by the litigating sides and has rightly concluded that the respondent is an

industry under Section 2(j) of the Industrial Disputes Act, 1947. It is also noticed that the petitioner had produced certain certificates of experience issued by the respondents. The said certificates were brought on record and on perusal of Exhs. 23 and 24, the trial Court concluded that the certificate indicates the working of the petitioner for 193 days in between 1.1.2008 to 15.9.2008. Earlier he had worked for 268 days in between 1.1.2007 to 31.12.2007.

7] Section 25 B of the Industrial Disputes Act defines continuous service, as under:-

“25B. Definition of continuous service.

For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any

other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case. Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”

8] Sections 25F and 25G of the Industrial Disputes Act read as under:-

“25F. Conditions precedent to retrenchment of workmen

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government¹ [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25G. Procedure for retrenchment.

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

9] It calls for no debate that when computation of 240 days in continuous service of an employer is to be undertaken, the period of one calendar year is preceding the date of reference. The date of reference is always the date on which the cause of action has arisen. If the 12 calendar months preceding the date of reference 16.9.2008 is considered, it is obvious that the petitioner

has worked for 240 days in one calendar year over a period from 15.9.2007 to 15.9.2008. The experience certificates at Exhs.23 and 24 establish that the petitioner had worked for 240 days in the 12 calendar months preceding the date of reference.

10] The learned Advocate for the petitioner has strenuously canvassed that one Rajendra Namdeorao Aankar was engaged in the water supply area in 2008 by the respondents. As the petitioner noticed this aspect, information was collected vide communication dated 27.10.2017 from the Sarpanch of the Village Panchayat. Based on this information, it is canvassed that Section 25G has been violated and, therefore, the view taken by the Hon'ble Apex Court in *Ajaypal Singh V/s. Haryana Warehousing Corporation* (supra) would be applicable.

11] I find from the impugned judgment and the pleadings of the petitioner that he was engaged in the water supply area considering the absence of a regular employee who had proceeded on leave. Moreover, it also emerges from the record that the petitioner has worked as a daily wager for 2 years and is out of employment for 12 years. There was no proper recruitment process undertaken by the respondents so as to establish that the petitioner was selected by a selection procedure and by a Selection Committee.

12] In the above backdrop, the issue would be as

to whether a daily wager, who has been offered work on daily wages due to absence of a regular employee, could be granted reinstatement in service with continuity and full back wages when he has no evidence to establish availability of a permanent vacant post. Moreover, the law laid down by the Hon'ble Apex Court in the matter of *Secretary, State of Karnataka & Ors. V/s. Uma Devi (3) & Ors.* [2006(4) SCC 1], would be applicable to this case thereby restraining the Court from granting reinstatement in service.

13] The Hon'ble Apex Court, while delivering the judgment in *Ajaypal Singh V/s. Haryana Warehousing Corporation* (supra), has referred to its earlier judgment in the matter of *M.P. Administration V/s Tribhuwan* [(2007) 9 SCC 748] and it was observed in paragraph 15 in *Ajaypal Singh V/s. Haryana Warehousing Corporation* (supra), as under:

"15. This Court in *M.P. Admn. v. Tribhuban* while taking into account the doctrine of public employment involving public money and several other facts observed as follows: (SCC pp.751-52, paras 6-7)

"6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the

doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of 'workman' as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in State of Karnataka v. Umadevi (3) and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

7. *The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors. (See M.P. Housing Board v. Manoj Shrivastava, State of M.P. v. Arjunlal Rajak and M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey)"*

14] Referring to the case of *Secretary, State of Karnataka & Ors. V/s. Uma Devi (3) & Ors.* (supra), the Hon'ble Apex Court observed in the case of *Maharashtra State Road Transport Corporation V/s Casteribe Rajya Parivahan Karmachari Sanghatana* [(2009) 8 SCC 556], in paragraph 35 that the judgment in *Secretary, State of Karnataka & Ors. V/s. Uma Devi (3) & Ors.* (supra), is an

authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wager or *ad-hoc* employees, unless the recruitment was itself made regularly in terms of the constitutional scheme. In paragraph 36, it was held that *Secretary, State of Karnataka & Ors. V/s. Uma Devi (3) & Ors.* (supra), would not denude the Industrial and Labour Court of their statutory powers under Section 30 and 32 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

15] The learned Advocate for the petitioner submits, by placing reliance upon the judgment delivered by the Hon'ble Apex Court in the matter of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others*, [(2013)10 SCC 324], that the normal relief in such matters is in the form of an order of reinstatement, with continuity and full back wages. I am unable to accept the said submission for the reason that it is now settled that in public employment or in any employment with state instrumentalities, mere completion of 240 days or a daily wager being replaced by another daily wager, invoking Section 25G of the Industrial Disputes Act, would not lead to an automatic reinstatement with continuity with or without back wages.

16] In the following four cases, the Hon'ble Apex Court has held that if an employee has worked on daily wages for a short duration and if this is followed by a long period of unemployment, reinstatement should be avoided and quantified compensation should be the relief to be granted:-

(i) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota V/s. Mohanlal*, **2013 LLR 1009**.

(ii) *Assistant Engineer, Rajasthan Development Corporation and another V/s. Gitam Singh*, **(2013) 5 SCC 136**,

(iii) *BSNL V/s. Man Singh*, **(2012) 1 SCC 558** and

(iv) *Jagbir Singh V/s. Haryana State Agriculture Marketing Board*, **(2009) 15 SCC 327**.

17] In the instant case, there was no evidence before the Labour Court that the petitioner was disengaged so as to recruit a person in his place. The Labour Court has also recorded, on the basis of evidence, that the petitioner was allocated duty on daily wages in place of a regular employee, who had proceeded on leave. As the engagement was temporary and as a stop gap arrangement, there was no evidence of a vacant post available. In these circumstances, I do not find that the impugned award could be termed as being perverse or erroneous to the extent of refusing the relief of reinstatement in service with continuity and back wages.

18] In view of the law laid down by the Hon'ble Apex Court, the petitioner would be entitled for

quantified compensation. The Labour Court has mechanically granted Rs.10,000/- as compensation without any basis. There is nothing to indicate from the impugned order as to how the Labour Court has calculated the compensation of Rs.10,000/-.

19] In the four judgments referred to above, the judgment in *Assistant Engineer, Rajasthan Development Corporation and another V/s. Gitam Singh* (supra) has been relied upon by the petitioner, the Hon'ble Apex Court has concluded that it is well settled that the grant of relief of reinstatement with full back wages and continuity of service in favour of a retrenched workman, would not automatically follow as a matter of course. A distinction has to be drawn between a daily wager and an employee holding a regular post. In the case of a daily wager or similar type of cases, reasonable compensation would meet the ends of justice.

20] In a recent order passed by the Hon'ble Apex Court in the matter of Dadaji Tanaji Sonawane etc. etc. & Ors. V/s. Vice Chancellor, Mahatma Phule Krishi Vidyapeeth, Rahuri & Ors., *Petition for Special Leave to Appeal (C) Nos.21871-21873/2017, dated 04.10.2019*, higher compensation has also been awarded considering the financial capacity of employer. So also, the judgment in *Gitamsingh* (supra) was delivered in 2013 when the Hon'ble Apex court granted compensation of Rs.50,000/- for each year on daily wage service. In the instant case, I am considering the passage of 7 years after

Assistant Engineer, Rajasthan Development Corporation and another V/s. Gitam Singh (supra), and keeping in view that the respondent is the Grampanchayat which collects taxes, quantified compensation of Rs.75,000/- per year of service would be commensurate.

21] In view of the above, this petition is **partly allowed**. The direction of the Labour Court in Clause (2) of the award granting Rs.10,000/- as compensation, is quashed and set aside and is replaced by the amount of Rs.1,50,000/-. The respondents shall pay an amount of Rs.1,50,000/- to the petitioner within two months from the date on which the petitioner serves a copy of this order on respondent No.1, failing which the amount would carry interest at the rate of 4% per annum from the date of the judgment of the Labour Court.

(RAVINDRA V. GHUGE, J.)