

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

WRIT PETITION NO. 2647 OF 2011

- PETITIONERS:** 1 State of Maharashtra, through
Executive Engineer, Public Works
Division, Wardha.
- 2 State of Maharashtra, through
Executive Engineer, Public Works
Division, Arvi, Dist. Wardha

...VERSUS...

RESPONDENT: Dilip Zolbaji Durgade,
aged about 40 years, Occ. Service,
R/o. Wardh No. 16, Deoli, Dist. Wardha.

Mr. N.R.Patil, AGP for Petitioners.
None for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 22/02/2021.

1] Heard Shri N.R.Patil, learned AGP for petitioners. None
appears for respondent.

2] Petitioners assail the award dated 18.10.2007 passed by
the learned Labour Court Wardha in Ref. I.D.A No. 7/2001, whereby
the termination of the respondent w.e.f 26.05.1996, was held to be
illegal, on account of non-compliance of the mandatory provisions of

law under Section 25-F and 25-G of the Industrial Disputes Act 1947, and the reinstatement was directed.

3] This award dated 18.10.2007 is challenged in the present petition, which is filed on 23.02.2011. While issuing Rule on 18.8.2011, this Court had made it clear that, there would be no stay to the award passed by the Labour Court, Wardha, dated 18.10.2007, during the pendency of the Writ Petition, as the Labour Court had merely granted the relief of reinstatement to the respondent and denied the back-wages.

4] None appears for the respondent. Mr. Patil, learned AGP for the petitioners, contends that the respondent had approached the Labour Court after a span of five years, on account of which the reference itself ought to have been dismissed, for which reliance is placed on **S.N.Nilajkar vrs. K.P.Madhavan Kutty**, reported in **AIR 2000 SC 839**. He further submits that though the relationship of employer and employee was denied, the reliance by the Labour Court upon the statement of retired employees to hold the relationship, was misplaced. He further submits that burden

upon the workman to prove that he had worked for more than 240 days in one calender year was not discharged, for which reasons the impugned award could not be sustained. He further submits that the delay in filing the petition is explained in para 7 of the Writ Petition and since this Court has already issued Rule on 18.8.2011, the delay becomes inconsequential.

5] The award dated 18.10.2007 by the learned Labour Court is a reasoned one, based upon the evidence led by the respondent and the witnesses, on the basis of which a finding has been rendered that the respondent was duly employed with the petitioners. It is an admitted position on record that the respondent was appointed and terminated orally, his name was not recommended from the Employment Exchange and though a seniority list was published of the workers who worked from 1979 till 08.06.1986, though it was contended that his name was included therein, he had later on admitted that the seniority list at Exh. 12 did not mention his name. The learned Labour Court has relied upon the deposition of Shri Tukaram Dhondbaji Lute, who admittedly was in the employment of the petitioners, who has deposed that the

respondent was in the employment of the petitioners, to hold as such. It further relied upon the admissions of the petitioners that in case of daily-wager, they were not given any appointment orders and were not supplied the copies of muster rolls, and therefore, rejected the contention of the petitioners.

6] The learned Labour Court found that since 26.05.1983, the respondent was continuously employed till 1996 and had therefore completed more than 240 days of continuous service, in absence of rebuttal of which, it had no other option than to accept the case of the respondent and accordingly answered the Issue No.1 in the affirmative. While considering the claim for back-wages, the learned Labour Court relying upon the delay in approaching the Court, refused the same. In light of the requirement of section 25-F of the I. D Act that a workman, who has been in continuous service for not less than one year cannot be retrenched unless he has been given one months' notice in writing indicating the reasons for retrenchment or the workman has been given wages in lieu of such notice and also paid retrenchment compensation as indicated therein, in absence of anything on record to indicate compliance

thereof, specifically in light of the finding rendered by the Labour Court, that the respondent was engaged for a period of more than 5 years, as indicated above, I do not find that the contention of Mr. Patil, learned AGP that the impugned order holding that the termination was illegal on account of non-compliance of the requirement of section 25-F of the I.D. Act can be interefered with, in light of which, the present petition does not have any merit. Needless to say that it would be open and permissible for the petitioners to take any action against the respondent as is permissible in law, in case, it wants to discontinue with his engagement, if he continues to be so engaged.

7] The reliance on Madhavan Kutty (supra) by learned AGP is also of no assistance for the reason that the ground for delay in approaching the Labour Court, though has not been considered, however, for that reason alone the order of the Labour Court which has been in operation from 18.10.2007 till date, cannot be set aside, considering the fact that it is a welfare legislation.

8] The petition, therefore, is devoid of any merit, the same
is dismissed. No costs.

JUDGE

Rvjalit