

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

LETTERS PATENT APPEAL NO. 273/2011 IN WRIT PETITION NO.2711/2006 (D)

Namdeo s/o Govindrao Nandurkar,
Aged about 48 yrs., Occ.: Nil,
R/o Indira Nagar, Arvi Naka, Wardha.

APPELLANT

....VERSUS.....

The Executive Engineer,
Public Works Department, Wardha.

RESPONDENT

Shri S.A. Kalbande, counsel for the appellant.
Ms S.S. Jachak, Assistant Government Pleader for the respondent.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 12TH AUGUST, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised in this letters patent appeal is to the judgment of the learned Single Judge dated 21.02.2011 in Writ Petition No.2711 of 2006. By the said judgment the learned Single Judge allowed the writ petition filed by the respondent herein and set aside the award passed by the Labour Court, Wardha dated 08.06.2005 in Reference I.D.A. No.14 of 1997.

2. The facts in brief are that it is the case of the appellant that he was engaged as a Mazdoor with the Public Works Department, Wardha under its Executive Engineer. His engagement as Labourer was from 13.08.1979 till 22.11.1983 and thereafter from 21.02.1984 to 20.03.1985. The appellant sought to issue a demand note raising a dispute on 31.07.1996 as regards illegal termination of his services on

20.03.1985. The Conciliation Officer on 06.10.1997 made a reference to the Labour Court for adjudication. The appellant then filed a statement of claim in which he had stated that prior to termination of his services on 20.03.1985 he had completed continuous service of 240 days. His services had been dispensed with without complying the provisions of Sections 25F and 25G of the Industrial Disputes Act, 1947 (for short, 'the said Act') as well as Rule 81 of the Industrial Disputes (Bombay) Rules, 1957. In the written statement the respondent took a plea that since the reference was sought to be made after a lapse of about eleven years the records were not available. It was denied that there was relationship of employer and employee and hence question of completion of continuous service of 240 days did not arise.

3. The Labour Court after considering the evidence led by the parties recorded a finding that the appellant had completed continuous service of 240 days prior to 20.03.1985. On account of non-compliance with the provisions of Sections 25F and 25G of the said Act the Labour Court directed reinstatement of the appellant without any back wages. Being aggrieved the respondent filed Writ Petition No.2711 of 2006. The learned Single Judge held that in view of the belated reference after about eleven years, the records of the Department were destroyed. The same had caused prejudice to the Department. The evidence on record

was not sufficient to sustain the order passed by the Labour Court. By the impugned judgment, the writ petition was allowed and the award passed by the Labour Court was set aside.

4. Shri S.A. Kalbande, learned counsel for the appellant reiterated the submissions that were made before the learned Single Judge. According to him merely because there was some delay in raising the dispute the same was not sufficient to warrant rejection of the reference. At the most the learned Single Judge was empowered to mould the relief which was done in the present case by the Labour Court by denying the relief of back wages. Since the evidence on record was sufficient to sustain the order passed by the Labour Court, the learned Single Judge was not justified in reversing the same. He therefore submitted that the impugned judgment was liable to be set aside and the award of the Labour Court ought to be restored.

5. Ms S.S. Jachak, learned Assistant Government Pleader for the respondent supported the impugned judgment. She submitted that due to lapse of long period the records maintained by the Department were destroyed. The entire case of the appellant having been denied the burden was on him to prove the same. There was no evidence on record to indicate completion of continuous service of 240 days prior to 20.03.1985. Hence no interference was called for in the appeal.

6. We have heard the learned counsel for the parties and we have also perused the records of the case. It is undisputed that on the basis of illegal termination that was alleged to have taken place on 20.03.1985, the appellant approached to the Conciliation Officer on 31.07.1996. There is a delay of more than eleven years in doing so. In response to the statement of claim the respondent had raised a specific ground that on account of such delay the records pertaining to daily wage earners were not retained. The appellant examined himself at Exhibit 11 and he relied upon a notice dated 01.11.1983 which is at Exhibit 12. This notice seeks to terminate the services of the appellant from 22.11.1983. It is the case of the appellant that thereafter he was again reinstated in service on 21.02.1984 and he worked till 20.03.1985. Except averments to that effect and his deposition which has been challenged in the cross-examination, there is no documentary material to substantiate that claim. The respondent also examined its witnesses and brought on record the Public Works Manual to indicate that as per Clause 272 the records were destroyed after five years. It is in this backdrop that after finding that there was no material on record to indicate completion of continuous service for 240 days before 20.03.1985 it was held that the award passed by the Labour Court was perverse. We find that there is no material to dislodge this finding which has been arrived at after considering the entire record. On the aspect of delay it is well settled that

if on account of such delay in making the reference the other party destroys its records or the same cannot be made available said factor has to be taken into consideration. We find in the facts of the present case that the appellant has failed to prove his case and at the same time the respondent was handicapped on account of destruction of its records as per Clause 272 of the Public Works Manual.

7. In view of aforesaid, we do not find that there is any case made out to interfere with the adjudication by the learned Single Judge. The letters patent appeal therefore fails. It is accordingly dismissed leaving the parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)