

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

LETTERS PATENT APPEAL NO. 424/2011 IN WRIT PETITION NO. 4902/2009 (D)

1. The State of Maharashtra,
through its Secretary, Gram Vikas &
Jalsansadharan Department,
Mantralaya, Mumbai-32.
2. The Director, Social Forestry Department,
Maharashtra State, Madhyawarti Building, Pune.
3. The Deputy Director,
Social Forestry Department, 8th Floor,
New Administrative Building,
Near Zilla Parishad, Nagpur.
4. The Plantation Officer,
Social Forestry, Umrer Range,
Tah. Umrer, Dist. Nagpur.

APPELLANTS

.....VERSUS.....

Bhagwat Kawdu Shinde,
R/o Gaosut, Po. Bamni, Tq. Umrer,
Dist. Nagpur.

RESPONDENT

Shri A.S. Fulzele, Additional Government Pleader for the appellants.
Shri A.J. Pathak, counsel for the respondent.

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

DATE : 04TH OCTOBER, 2021.

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

The challenge raised in this letters patent appeal is to the order passed by the learned Single Judge on 08.02.2010 in Writ Petition No.4902 of 2009. By that order, the learned Single Judge was pleased to affirm the order passed by the Industrial Court in Complaint U.L.P. No.388 of 2002 by which the respondent was granted benefit of the Government Resolution dated 19.10.1996.

2. The facts on record indicate that the respondent was engaged as a Chowkidar/Labourer with the appellant no.4-Department since 03.02.1983. His services were terminated on 24.08.1987 but pursuant to the interim orders passed by the Labour Court in the complaint filed by him, he was reinstated in service and he continued in employment thereafter. Subsequent order of termination in the year 1999 was also subjected to challenge and by orders passed in those proceedings the services of the respondent were continued. Since benefit of Government Resolution dated 19.10.1996 was denied to the respondent he approached the Industrial Court by filing complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By its judgment dated 31.03.2009, said complaint was allowed and the services of the respondent were directed to be absorbed in a Class-IV post as per Government Resolution dated 19.10.1996. The writ petition filed by the appellants came to be dismissed after considering the findings recorded by the Industrial Court. Hence, this appeal.

3. Shri A.S. Fulzele, Additional Government Pleader for the appellants submitted that since continuation of services of the respondent was on the basis of orders passed by the Labour Court/Industrial Court, such benefit could not be granted to the respondent by relying upon the

Government Resolution dated 19.10.1996. It was his contention that the services rendered by the respondent were from 03.02.1983 to 24.08.1987. Since the respondent was not in service for a period of five years preceding 01.11.1994 he was not entitled for the benefit under the said Government Resolution. This aspect was not considered by the learned Single Judge and hence the impugned order was liable to be set aside.

4. Shri A.J. Pathak, learned counsel for the respondent supported the impugned order. According to him the finding recorded by the Industrial Court that the respondent rendered continuous service from 03.02.1983 was a finding of fact. There was no clause in the Government Resolution dated 19.10.1996 that service rendered by virtue of interim orders passed by the Court could not be taken into consideration. Moreover the finding that the employees junior to the respondent were retained in service as recorded by the Industrial Court had not been shown to be incorrect. He therefore submits that there was no reason to interfere with the impugned order.

5. On hearing the learned counsel for the parties and on perusal of the order passed by the Industrial Court as well as by the learned Single Judge, we do not find any reason to interfere with the order passed

in Writ Petition No.4902 of 2009. The Industrial Court has considered the entire evidence on record and has thereafter recorded a finding that the respondent rendered continuous service from 03.02.1983. Further finding recorded is that juniors to the respondent were retained in service and there was no evidence in rebuttal by the appellants. As regards the submission made on behalf of the appellants that service rendered pursuant to the orders passed by the Court need not be taken into consideration, we find that on the contrary Clause 10(A) of that Government Resolution requires the appellants to take cognizance of such orders and then ensure that such proceedings are withdrawn by the concerned employee after giving benefit of such orders. There is no clause pointed out which disentitled the employee who has approached the Court from taking advantage of the orders passed by the Court in proceedings initiated by him. Hence said contention cannot be accepted.

6. Considering the material available on record, we find that the Industrial Court was justified in granting relief to the respondent. The learned Single Judge rightly did not interfere in writ jurisdiction. In that view of the matter, we do not find any merit in the letters patent appeal. It is accordingly dismissed with no order as to costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)