

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

955 WRIT PETITION NO. 268 OF 2003

The Divisional Forest Officer, ...PETITIONER
Osmanpura, Aurangabad Division, Aurangabad
(Now Designated as Deputy Conservator of Forests
Aurangabad)

VERSUS

Chandrabhan Bhikaji Avahle, ...RESPONDENTS
Age-43 years, Occu-Labour,
R/o. Rotegaon, Tq. Vaijapur,
Dist. Aurangabad

Mr. N. T. Bhagat, AGP for the respondent/State
Mr. A. S. Shelke, Advocate for the respondent No.1

CORAM : RAVINDRA V. GHUGE, J.

DATE : 17-03-2022

ORAL JUDGMENT:

1. By this petition, the petitioner-Divisional Forest Officer seeks to challenge the judgment and award dated 24-09-2002, delivered by the Labour Court, Aurangabad vide which, reference (IDA) No. 26 of 1991, has been answered in the affirmative and the respondent second party Workman has been granted reinstatement in service with continuity and full

backwages from 01-05-1990.

2. By the order of this court dated 30-01-2003, this petition was admitted and interim relief has been granted in terms of prayer clause-C vide which the entire award has been stayed. It is undisputed that the respondent did not file an application under Section 17-B of the IDA Act, 1947, for seeking payment of last drawn wages during the pendency of this petition. The learned Advocate for the respondent submits that he has already attained the age of superannuation. The learned Advocate for the petitioner submits on instructions that the respondent is no more.

3. The petitioner department has assailed the award on three grounds. Firstly, that the Social Forestry Department is not an industry under Section 2(j) of the IDA Act, 1947. Secondly, that respondent was working on EGS. Thirdly, that he has not completed 240 days in continued employment.

4. In so far as the first ground is concerned, in the State of U.P. Vs Jai Bir Singh reported in (2005) 4 SCC 1, the Hon'ble Supreme Court (5-Judges

Bench) referred the issue whether Social Forestry in the State of Uttar Pradesh is an industry? to a Larger Bench in the light of the judgment delivered by the Constitution Bench of the Hon'ble Apex Court in Bangalore Water Supply and Sewerage Board Vs A. Rajappa and others reported in (1978) 2 SCC 2013. However, the learned Division Bench of this Court (Coram A. S. Oka (as His Lordship then was) and M. S. Sonak, JJ), in the Chief Conservator of Forests, Pune (T) and anr Vs Janabai Sonaba Sarpale reported in 2019 II CLR 28, has concluded that the Forest Department in the State of Maharashtra is an industry.

5. In so far as the second contention of the petitioner is concerned, the petitioner has not produced before the Labour Court, any documentary evidence to substantiate it's stand that the second party workman was working under the EGS. It is a part of the system of operating EGS, that the person of the rank of a Deputy Collector, is given the charge of the EGS department. Those workers, who are recruited under the EGS, are given identity cards identifying that they are under EGS. The attendance register is maintained by the

authority Incharge of the EGS department, exclusively for the EGS workers. Payments to EGS workers are made through the funds allocated for the said scheme.

6. It is beyond comprehension that the department did not produce a single sheet of paper to establish that the respondent was working under the EGS, when they have voluminous records in the department of EGS. Conclusion of the Labour Court, therefore, that the first party employer has not proved that the second party was working under EGS, cannot be termed as being perverse or erroneous.

7. In so far as the third ground raised is concerned, it is the case of the petitioner that the respondent did not complete 240 days in a calendar year. A statement was produced before the Labour Court by the Range Forest Officer which indicates that the respondent, in between 1981 to 1989 has worked for 346, 352, 352, 359, 358, 357, 358, 349 and 297 days in each calendar. In some years, out of the maximum 365 days in a year, he has taken holidays for only 6 to 7 days.

8. The learned Advocate for the respondent rightly submits that the respondent has been a diligent litigant. After he was dis-engaged on 01-05-1990, he raised an industrial dispute immediately and his reference was registered before the Labour Court in April, 1991. He has litigated till this date. He succeeded before the Labour Court, which conclusion, I do not find could be termed as being perverse or erroneous.

9. This court, by a non-speaking order, has stayed the judgment on 30-01-2003. It is, therefore, obvious that after the respondent worked for around eight years, he has been out of employment for almost 32 years. He has attained the age of superannuation. In these circumstances, considering the law laid down by the Hon'ble Supreme Court in Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs Mohanlal 2013 LLR 1009, Assistant Engineer, Rajasthan Development Corporation and another Vs Gitam Singh, (2013) 5 SCC 1361, BSNL Vs Man Singh, (2013) 1 SCC 558 and Jagbir Singh Vs Haryana State Agriculture Marketing Board, (2009) 15 SC 327, sustaining the order of reinstatement in service with continuity and full

backwages would be impracticable. Instead, granting quantified compensation would be a better option. The Hon'ble Supreme Court has granted compensation in between Rs.30,000/- to Rs.50,000/- per year of service subject to the financial capacity of the employer.

10. It is common knowledge that the Forest Department is always in financial difficulty. However, as the respondent has worked for eight years, in my view, compensation at the rate of Rs. 35,000/- per year of service would be appropriate, in lieu of reinstatement, continuity of service and backwages.

11. In view of the above, this petition is partly allowed only to the extent of modifying the directions of the Labour Court of granting reinstatement with continuity and full backwages. The said direction shall be replaced with a direction to the petitioner to pay quantified compensation of Rs.2,80,000/- on or before 31-05-2022, failing which said amount shall carry interest @ 6% p.a. from the date of the award 24-09-2002 and in which case, the interest component shall be paid

from the salary of Deputy Conservator of Forest.

12. In the event the information of the petitioner that the respondent is no more is correct, the said amount shall be paid to his surviving widow within the same time frame.

13. Rule is made partly absolute, accordingly.

[RAVINDRA V. GHUGE, J.]