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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1683 OF 1999

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| 1. | Arvind G. Chaudhari
Sub Divisional Officer,
Irrigation Sub Division, Dharangaon
Taluka – Erandol, District – Jalgaon | PETITIONERS |
| 2. | The Executive Engineer,
Jalgaon Irrigation Division,
District – Jalgaon | |

VERSUS

- | | | |
|----|---|-------------|
| 1. | Gajanan Digambar Badgujar
Age – Major, Occ – Service
R/o Badgujar Galli, Dharangaon
Taluka – Erandol, District – Jalgaon | RESPONDENTS |
| 2. | The Presiding Officer
Labour Court, Jalgaon | |

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Mr. D. R. Shelke, Advocate for the petitioners
Ms. Ranjita Barhate h/f Mr. M. S. Deshmukh, for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th JULY, 2022

JUDGMENT :

1. This petition, filed under Article 226 and 227 of the Constitution of India, takes exception to the judgment and Award dated 1st February, 1999 passed by Labour Judge, Jalgaon in Complaint (ULP) No. 309 of 1991.

2. The respondent filed the said complaint under Item 1 (a) to (g) of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (hereinafter for short "MRTU and PULP Act") against the petitioners - employer claiming that he had been in employment of the petitioner No. 2 since 1981 at Patoda section. He had unblemished service record and has completed more than 240 days' continuous service in each year. His services were illegally terminated on 16th November, 1989. No procedure, prescribed by law, was followed while terminating his service. He claimed that his juniors were retained and rule of '*last come first go*' was not observed. Therefore, he claimed reinstatement in service with continuity and back wages.

3. The petitioners resisted the complaint by filing written statement, contending that at no point of time the respondent has ever completed 240 days continuous service in a year. He was engaged under the Employment Guarantee Scheme (EGS) and he was being engaged as and when work was available. It was, therefore, claimed that provisions of the Industrial Disputes Act and the MRTU and PULP Act are not applicable and hence the complaint is not tenable.

4. The Labour Court, after recording the evidence and hearing

the parties, partly allowed the complaint and held that the petitioners have indulged in unfair labour practice under Item 1 (a), (b), (d), (e) and (f) of Schedule IV of the MRTU and PULP Act. The respondent was directed to be reinstated in service with continuity. However, the prayer for back wages was rejected. The petitioners – employer have challenged this judgment and Award in the present writ petition.

5. Heard learned advocate for the petitioners and learned advocate for the respondent.

6. The record indicates that the Labour Court has held that the respondent has completed 220 days continuous service between 19th November, 1985 and 19th December, 1986. The Labour Court has further observed that though the petitioners produced on record the Muster Roll for the period from 19.01.1983 to 1989, they have not filed attendance charts of the respondents from 1983 to 1989. The attendance charts filed by the petitioners were disbelieved by the Labour Court on the ground that the attendance charts at Exhibits-C-38, C-41 and C-42 are contradictory to each other. It is further held that the petitioners have not produced anything, either attendance muster or wages register for the period 3rd April, 1986 to 3rd July, 1986, 4th August, 1986 to 3rd September, 1986, therefore,

including these days, the Labour Court has held that, the respondent has completed more than 240 days continuous service.

7. As per the record, the respondent has worked on most of the days in EGS. The Charts placed on record by the petitioners show that the respondent was working with the department between 19th January, 1985 and 18th June, 1985 and between 19th October, 1988 and 18th April, 1989. The Labour Court, therefore, could not have come to a conclusion that the respondent worked as a permanent employee and provisions of section 25 F of the Industrial Disputes Act ought to have been followed.

8. Be that as it may, taking into consideration the fact that the respondent is out of employment since the year 1989 i.e. for a period of 33 years, this Court is of the considered view that in the light of the ratio in *"Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota V/s Mohan Lal"* 2013 LLR 1009; *"Assistant Engineer, Rajasthan Development Corporation and another V/s Gitam Singh"* (2013) 5 SCC 136; *"BSNL V/s Man Singh"* (2012) 1 SCC 558 and *"Jagbir Singh V/s Haryana State Agriculture Marketing Board"* (2009) 15 SCC 327, the relief of reinstatement in service with continuity cannot be

granted.

9. The respondent must have attained the age of superannuation by this time. In that view of the matter, it would be appropriate to quantify the compensation as per the directions of the Hon'ble Apex Court in aforesaid rulings. In the said rulings, the Supreme Court has held that where reinstatement is not feasible or proper, compensation of about Rs.30,000/- to Rs.40,000/- per year of service would be fair.

10 In the peculiar facts and circumstances of the present case and particularly taking into consideration the fact that the respondent has worked most of the period of his service on EGS, and not completed 240 days continuous service in any of the year during his service tenure, the total compensation of Rs.2,50,000/- would serve the ends of justice.

11. At the time of admitting this petition, this Court had directed the petitioners to deposit back wages in this Court. Accordingly, the petitioners have deposited an amount of Rs.1,40,000/- in this Court. The respondent has withdrawn an amount of Rs.1,00,000/- out of the said amount and an amount of Rs.40,000/- is lying in the bank.

12. In the result, writ petition is partly allowed. The order

dated 1st February, 1999, passed by the Labour Court, Jalgaon in Complaint (ULP) No. 309 of 1991 is hereby modified to the extent of clause No. (iii). The petitioners shall pay total monetary compensation of Rs.2,50,000/- to respondent No.1. The amount of Rs.1,40,000/- already deposited by the petitioners shall be deducted from the same. The balance amount be deposited by the petitioners in this Court within a period of 12 weeks from today. The respondent shall be entitled to withdraw the amount already deposited along with interest accrued, if any and the amount to be deposited by the petitioners pursuant to this order. Rule is made absolute in aforesaid terms.

[NITIN B. SURYAWANSHI]
JUDGE

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