

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 495 OF 2013

The State of Maharashtra and others ... **Petitioners**

VERSUS

Balaji s/o Sukha Chavan ... **Respondent**

Mrs. V. S. Chaudhary, AGP for the petitioners
Mr. A. S. Shelke, Advocate for the respondent

CORAM : RAVINDRA V. GHUGE, J.

DATE : 7th March, 2022

ORDER:

1. By this petition, the petitioner seeks to challenge the Judgment and Award dated 19.01.2011 delivered by the Labour Court vide which Reference (IDA) No. 5 of 2007 has been answered in the affirmative and the respondent has been granted reinstatement in service with continuity. Back wages have been denied.

2. I have considered the strenuous submissions of the learned AGP on behalf of the State and the learned Advocate on behalf of the respondent. With their assistance, I have gone through the petition paper book.

3. Insofar as, whether the Petitioner-Forest Department is an Industry, there is no dispute and there is no verdict of the Hon'ble Apex Court, though the issue has been refereed to a Larger Bench in State of

U.P. Vs. Jai Bir Singh, 205 II CLR 534. However, the learned Division Bench of this Court in the case of Chief Conservator of Forests, Pune (T) and another vs. Janabai Sonaba Sarpale, 2019 II CLR 28, held that the Forest Department in the State of Maharashtra is an industry. This Court has taken a similar view vide judgment dated 06.05.2019 in Writ Petition No. 2021/2006 in the case of State of Maharashtra and the Deputy Director, Social Forestry vs. Ahmednagar Zilla Van Kamgar Union.

4. In the instant case, the petitioner employer had raised a ground that the respondent employee was engaged through the Employment Guarantee Scheme. However, this aspect was not established before the Labour Court. Such a person working on the Employment Guarantee Scheme, finds his name entered in the Employment Guarantee Scheme register, he gets a specific identity - Employment Guarantee Scheme Card, he is paid monthly wages through the Employment Guarantee Scheme funds and there is a special officer appointed for appointment and payment of wages of the Employment Guarantee Scheme workers. As such, the claim of the petitioner that the respondent was an employee under the Employment Guarantee Scheme, cannot be sustained.

5. The respondent was appointed as a Watchman on 01.05.1992. He was terminated after 13 years on 01.04.2005. By the impugned

Award dated 19.01.2011, his reference was allowed and he was granted reinstatement in service with continuity. He was reinstated in employment in August, 2019. The respondent is around 54/55 years of age and would superannuate at the age of 60 years. He has not preferred any proceedings for seeking wages from the date of award till his reinstatement in employment in August, 2019. It is possible that since 01.04.2005, when he was terminated, till August, 2019, he may have sustained himself and probably may have been in some sort of gainful employment, keeping in view that he has not initiated any proceedings for payment of his regular salary after the Labour Court in his favour. Even an application under section 17-B of the Industrial Dispute Act has not been filed in this Court.

6. In view of above, this petition is disposed off.

7. Insofar as, the period from 19.01.2011 till August, 2019 is concerned, as the respondent has not initiated any recovery proceedings and has not applied under section 17-B of the Industrial Disputes Act, he would not be entitled for the wages for the said period. Nevertheless, as his termination is quashed and set aside, the impugned Award is not interfered with by this Court, he would be entitled for continuity in service from 01.04.2005 till his reinstatement in August, 2019. His services would, therefore, be reckoned with from

01.05.1992 onwards till he continues in employment till the date of his superannuation.

8. In order to reduce litigation, the petitioner is directed to forward the proposal of the respondent for regularization as has been done in case of an employee in Writ Petition No.1574/2014 which is disposed off today. The Forest Department would forward the proposal to the competent authority for regularization of the respondent on or before 31.05.2022 and the Competent Authority would decide the said proposal on or before 31st August, 2022.

(RAVINDRA V. GHUGE, J.)

JPC