

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

921 WRIT PETITION NO.5888 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
YUVRAJ DAULAT KHAIRNAR

...

AGP for Petitioner State : Mrs. V.S.Choudhary
Advocate for Respondent : Mr. S. S.Patil

CORAM : RAVINDRA V. GHUGE, J.
DATE : 25th March, 2022

ORDER:

1. The Chief Conservator of Forest, Dhule, the petitioner herein, is aggrieved by the impugned directions issued by the Industrial Court, Dhule, vide judgment dated 5.11.2019 (with an addition by Corrigendum dated 04.12.2019), vide which, Complaint (ULP) No.5/2016 filed by the respondent herein has been allowed with the following directions:-

“[1] Complainant ULP No. 5 /2016 is hereby allowed with costs.

[2] It is hereby declared that, the Respondent has been engaged in unfair Labour practices under Items 5,6,9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, regarding the service, particularly absorption and regularization and payment of wages, of the Complainant.

- [3] The Respondent is hereby directed by permanent injunction to cease and desist from being engaged in unfair Labour practices declared as above or otherwise in regard with the services of the Complainant.
- [4] The Respondent is hereby directed to absorb and regularize the Complainant on sanctioned vacant and permanent posts of Forest Labour on the establishment, with effect from the date of completion of his 240 days continuous or intermittent service during the period from 01.11.1994 till 30.06.2004 in accordance with the Government Resolution bearing No. बैटक-2010 / प्र.क.7 / फ-9 dated 16/10/2012 at Exh.C-89 sanction and creation of permanent post by approving the staffing pattern as per G.R. dated 13/09/2019 bearing No.MFS-2017/ प्र.क.77 / फ-8 (List Exh.C-78) and as per the approved sanctioned staffing pattern at Exh.C-79.
- [5] The Respondent shall pay the Complainant the Pay and Allowances for the permanent, vacant, sanctioned post of Forest Labour from the date of the absorption and regularization of the Complainant on sanctioned vacant permanent post of Forest Labour on the establishment.
- [6] If the Respondent fails to pay the arrears of Pay and Allowances to the Complainant within a period of three months from the date of this order, it shall carry interest @ 6% p.a. from the date of this order till realization.

Place : Dhule

Date: 05.11.2019/*11.11.2019

Sd/xx

Member,

Industrial Court,Dhule

[*Corrected by addition as per the corrigendum order dt.4/12/2019 passed below Exh.U-11)"]

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. With their assistance, I have gone through the record and proceedings in Complaint (ULP) No.5/2016.

3. Two basic issues raised by the petitioner in this petition are, (a) as to whether the respondent was working under the Employment Guarantee Scheme (EGS) and (b) as to whether he has completed 240 days in continuous employment with the petitioner in the 12 consecutive calendar months preceding the date of reference. The date of reference would be the date on which the Complaint (ULP) was filed i.e. on 05.02.201. The industrial Court has delivered a lengthy judgment running into 137 pages.

4. It is well settled that those workers working under the EGS cannot approach the labour Court or the Industrial Court and cannot claim reinstatement, regularization, continuity of employment etc. Following are the judgment/orders of the Hon'ble Apex Court and of this Court, in which it is laid down that EGS workers cannot litigate for seeking regularization, reinstatement or continuity of employment:-

- (1) State of Maharashtra Vs. Bhausahab Nathu Falke, 2002 (1) MLR 74
- (2) Arvind G. Chaudhari & Anr. Vs. Dhanraj Nathu Patil & Anr., 2008 (6) Mh.LJ.746
- (3) Manabhau Damu Khairnar & Anr. Vs. State of Maharashtra & Anr., 1996 (1) LLJ 990.

- (4) Chief Executive Officer, Zilla Parishad, Ahmednagar Vs. Dault Deshmukh & Anr., 2001 (2) Mh.LJ 543
- (5) Order of the Hon'ble Supreme Court dated 02.12.1996 in Civil Appeal No. 15339/1996 (State of Maharashtra & Anr. Vs. Subhash Narayan Ahirrao)

5. Having considered the judgment of the Industrial Court, submissions of the learned Advocates and having perused the record and proceedings, it appears that there are certain documents which are relevant. Exh. U-27 is an Annexure in Complaint (ULP) No.18/1998. The name of the complainant employee is shown as Yuvraj Daulat Khairnar, the respondent herein. The date of joining duty as Forest Labour is 30.06.1994 and the date of disengagement is 19.01.1998. The learned Advocate for the respondent workman submits that probably this is a complaint pertaining to the disengagement of the respondent. The respondent had challenged the disengagement before the labour Court and later on abandoned the complaint.

6. Though this seems to be a chart annexed to the Complaint (ULP) of the respondent, when it was granted Exh.U-27 by the Industrial Court, the signature of the Range Forest Officer appears on the second page of Exh.U-27. This chart indicates that the respondent worked for 115 days in the whole of the year 1994. In 1995, he has worked for 356 days. In 1996, he worked for 336 days and in 1997 he worked for 344 days. When he was disengaged in 1998, he had worked

for 17 days. The amount of wages paid to him @ Rs.31.70 per day initially and which increased up to Rs. 41.20, is also mentioned. This chart does not appear to be pertaining to the EGS though neither of the parties can explain as to how this document Exh. U-27 came before the Industrial Court.

7. The petitioner filed several documents below list Exh.C-18 before the Industrial Court, from Exh.C-26 till Exh.71. For the period 1979 till 31.10.1997, the respondent was working on EGS. The entire attendance record of the petitioner for the period 1994 till 19th January, 1998 is covered by the attendance Register Exh. 62 till Exh.70. As such, the separate sheet demonstrated as an Annexure to complaint (ULP) No.18/1998 filed by the complainant is squarely covered by Exh.62 to Exh. C-70. From January, 1994 to June, 1994 and August, 1994 to September, 1994, he had not worked for a single day. He worked in July for 30 days and from 01.10.1994, he has through out worked on EGS. The respondent is present in the Court who, instructs the learned Advocate to state that this Complaint(ULP) 18/1998 was filed by him before the Labour Court Dhule challenging his disengagement and he did not pursue the said complaint which may have been dismissed in default.

8. To be doubly sure of the documents which I am perusing from the Record and proceedings, I have gone into the attendance

record which Exh.C-62 to Exh.C-70. Each sheet of the attendance of the month carries the title as Employment Guarantee Scheme Daily Attendance Sheet, Forest Department (West), Dhule. Payment has been made as per the attendance record and the respondent has signed on the revenue stamp at each place. The attendance record and the payment of wages has been passed by the Deputy Conservator of Forest, (West) Dhule. The name of the respondent Yuvaj Daulat Khairnar appears in this daily attendance register. Each sheet maintains the record of attendance for 11 days and a chart is then prepared on recording the total attendance of each candidate.

9. The respondent points out the document dated 20.12.1997 which is the first disengagement of the respondent w.e.f. 19.01.1998. The learned AGP, on instructions, submits that for the period mentioned herein from 30.06.1994 till 01.01.1997, the respondent was not working on EGS. As such, considering Exhibit U-27 and Exhibit C-61 to Exhibit C-70 and the termination order dated 20.12.1997, it appears that the respondent has completed more than 240 days under a scheme in three consecutive years i.e. 1995, 1996 and 1997. This is borne out from Exhibit U-27 which is signed by the Range Forest Officer, Dhule.

10. In view of the above, the direction of the Industrial Court granting absorption and regularization of the respondent is

unsustainable. Further, the directions set out in Clause Nos. 4 to 6 by the Industrial Court need to be set aside. Consequently, it can be concluded that the respondent has completed 240 days as per Exhibit U-27 in three years i.e. calendar years 1995, 1996 and 1997. Rest of his service is under EGS.

11. In the following four judgments, the Hon'ble Supreme Court has held that if an employee is working intermittently for short duration, and is out of employment for a long duration, quantifying compensation for the number years he has worked would be appropriate:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, **[(2013) 5 LLR 1009]**;
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, **[(2013) 5 SCC 136]**;
- (c) *BSNL Vs. Man Singh*, **[(2012) 1 SCC 558]**; and
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, **[(2009) 15 SCC 327]**.

12. Though the petitioner contends that he has been working from 1986, the record before the Industrial Court which I have perused indicates that it was only four years i.e. from 1994 till December, 1997, that he was not on EGS. Prior there to, he was on EGS. With his termination from 19.01.1998, he had preferred Complaint (ULP)

18/1998 before the Labour Court and which is said to have been dismissed in default. In these circumstances, it would be pragmatic to quantify compensation for the three years as the respondent has put in continuous employment under a scheme and was not under EGS.

13. In view of the above, this petition is partly allowed.

The direction set out in Clauses (2) to (6) of the impugned judgment are quashed and set aside with the following directions:-

(a) Complaint (ULP) No. 5 of 2016 is partly allowed to the extent of quantifying compensation.

(b) The petitioner shall pay compensation at the rate of Rs.40,000/- (forty thousand) per year of service put in by the respondent.

(c) As the respondent has worked for three years in other than EGS scheme and has completed 240 days in each year, the petitioner shall pay an amount of Rs.1,20,000/- (Rupees One lakh twenty thousand) to the respondent, on or before 30th June, 2022.

(RAVINDRA V. GHUGE, J.)