

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9071 OF 2013

Kamlabai Babasaheb Itkare ... Petitioner

VERSUS

The Sub Divisional Forest Officer, Beed ... Respondent

Mr. Parag Shahane, Advocate for the petitioner
Mrs. V. S. Chaudhary, AGP for the respondent State.

CORAM : RAVINDRA V. GHUGE, J.
DATE : 7th March, 2022

ORDER:

1. The petitioner is aggrieved by the impugned Award dated 02.01.2013 by which the Labour Court, Aurangabad has answered Reference (IDA) No.10/2003 in the negative.
2. I have considered the strenuous submissions of the learned Advocate for the petitioner and the learned AGP on behalf of the State.
3. The petitioner claimed to be working as a Majdoor (Worker) on daily wages in between 01.01.1992 to 02.12.2002. Her engagement was admitted by the respondent vide its written statement Exhibit C-3. However, the respondent has taken a stand that the petitioner was engaged under the Employment Guarantee Scheme. As the state of Maharashtra decided not to continue with the daily wagers under the Employment Guarantee Scheme, the competent authority

purportedly issued notice dated 09.01.2003/20.02.2003 from the office of Shri Pandurang J. Phule, Range Forest Officer (EGS, Patoda). Though the concerned Officer from the EGS has issued the notice of disengagement to the petitioner, the case of the petitioner is that this aspect was not proved before the Labour Court. She submitted that she did not receive the said notice.

4. I find from the record that skeletal evidence was led by the petitioner and the respondent did not even step into the witness box. Had the respondent proved that the petitioner was deployed through the Employment Guarantee Scheme, the petitioner would have been out of the Court in the light of the position of law that the Employee Guarantee Scheme employee can neither seek continuity in employment nor can seek regularization and cannot even file an unfair labour practice complaint or raise an industrial dispute before the Labour Court.

5. The only aspect indicating that the petitioner was working under the Employment Guarantee Scheme is the notice issued by Shri Pandurang J. Phule, Range Forest Officer (EGS, Patoda). The said notice is allotted Exhibit No. as C-8. However it was not proved by the respondent that this notice was served upon the petitioner. This creates suspicion as to whether the notice was proved or not. Nevertheless, as the defence taken by the respondent was that the

petitioner was engaged under the Employment Guarantee Scheme, the onus and burden lies upon the respondent to prove this fact.

6. In view of above, the petition is partly allowed.

The impugned Award dated 02.01.2013 is quashed and set aside on the following conditions:-

- (a) Application (IDA) No.10 of 2003 stands restored to the file of the Labour Court, Aurangabad.
- (b) Both the litigating parties shall appear before the Labour Court, Aurangabad on 25th March, 2022. Separate notice need not be issued by the Labour Court.
- (c) The petitioner is granted liberty to lead additional evidence and the respondent is granted liberty to lead oral/documentary evidence.
- (e) Recording of evidence would be concluded till 30.06.2022 and the oral submissions of the litigating parties would be concluded in between 04.07.2022 till 16.07.2022.
- (f) The Labour Court, Aurangabad would deliver its Award on the basis of evidence already adduced as well as additional evidence recorded, on or before 31st August, 2022.

- (g) Since the Reference case pertains to the year 2003, the Labour Court would give highest priority to the matter and if required, conduct the proceedings on day to day basis.
- (h) It is expected that the litigating parties would render wholehearted cooperation to the Labour Court and any adjournment sought on trivial or unreasonable grounds would be rejected by the Labour Court.

(RAVINDRA V. GHUGE, J.)

JPC