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

902 WRIT PETITION NO.1395 OF 2006

Shrirampur Municipal Council,
Shrirampur, Through it's
Chief Officer,
Shri. Vijay Yeshwant Kulkarni,
Age: 43 years, Occu: Service,
R/o. Shrirampur, Tq. Shrirampur,
District Ahmednagar

...PETITIONER

VERSUS

Mrs Shashikala Waman Mhaske,
Age: 50 years, Occu: Service,
R/o. Ragade Cycle Shop,
Near Belapur Naka, Ward No.7,
Shrirampur, Dist. Ahmednagar

...RESPONDENT

...

Mr V. S. Bedre, Advocate for petitioner;
Mr D. D. Pokharkar, Advocate for respondent

CORAM : RAVINDRA V. GHUGE, J

DATE : 10th March, 2022

ORAL JUDGMENT:

1. The petitioner/Municipal Council (first party), is aggrieved by Judgment and Award dated 27/06/2005, by which, Reference (IDA) No.86/1993 was answered in the affirmative and the respondent/second party was granted reinstatement, with continuity in service and 25% backwages.

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2. This petition was admitted by the order of this Court, dated 26/06/2006 and the impugned award was stayed. Subsequently, the employee/second party preferred Civil Application No.7988/2006 and by an order dated 27/04/2007, the application was allowed, directing the petitioner/first party to pay arrears of the amount payable under Section 17-B of the Industrial Dispute Act, 1947, from the date of the filing of the application. It is stated that Section 17-B calculations have been made as per the last drawn wages of the employee/second party, which was Rs.20/- per day.

3. I considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the record available. It is apparent that the employee/second party did not have any evidence to indicate, much less, proof that she was working continuously on daily wages as a 'Sweeper' from 1976, until her oral termination. The petitioner/first party took a stand that the employee/second party was working intermittently and in 1991-92, she had put in only 69 days and in 1992-93, she had put in only 6 days. She has not completed 240 days in continuous employment.

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4. It is well settled law that, the onus and burden lies on the employee to plead and prove that she has completed 240 days in continuous employment. In the present case, the employee/second party did not have any documentary evidence in her custody. She, therefore, preferred an application Exh.U-4 calling for certain documents, which were in the custody of the employer/petitioner. The Labour Court directed the production of the said documents and the petitioner/first party chose not to produce the same. The burden was, therefore, discharged by the workman/second party and the Labour Court, therefore, drew an adverse inference on account of the conduct of the petitioner.

5. It was in the above circumstances that, the Labour Court concluded that the employee/second party had completed 240 days in continuous employment from 1976 till 08/04/1992. She was granted reinstatement, with continuity in service and 25% backwages. This direction to pay 25% backwages has not been assailed by the workman/second party before this Court.

6. Considering the above and since the scope of the writ petition is not to enable the employer to fill in the lacunas in the evidence, the petitioner/first party cannot be granted any relief. At the same time, it cannot be ignored that, the workman/second

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party was in employment for around 15 years as a daily wager, and is out of an employment for 25 years. His last drawn wages were @ Rs.20 per day and on the days when the Municipal Council had holidays, no work was available as the office was closed. Roughly, she used to work for around 26 days on an average. She has been out of employment for 25 years. She has attained the age of superannuation, and therefore, the employer/first party has stopped paying her last drawn wages under Section 17-B of the Industrial Dispute Act.

7. In my view, the law laid down by the Hon'ble Supreme Court, in (a) Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, (2013 LLR 1009); (b) Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136]; (c) BSNL Vs. Man Singh, [(2013) 1 SCC 558]; and (d) Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327], would become applicable to this case.

8. The Hon'ble Supreme Court has concluded that, when reinstatement in service is not practicable, quantifying compensation in lieu of reinstatement in service, would be a better option. Compensation has to be quantified by taking into

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account the last drawn wages earned by the employee and the capacity of the employer to pay. It is common knowledge that the Municipal Councils are always in financial difficulties. In between 2009 to 2013, the Hon'ble Supreme Court had granted compensation in between Rs.25,000/- to Rs.50,000/- per year of service. With the passage of around 8 to 9 years, this amount needs to be increased.

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

The impugned award dated 27/06/2005 in Reference (IDA) No.86/1993 stands modified to the extent of Clause 2 of the operative part of the order, with the following directions :-

"The first party/employer is directed to pay compensation @ Rs.30,000/- per year of service to the second party/workman for a period of 15 years (Rs.30,000/- x 15)".

10. The petitioner/first party shall, therefore, pay an amount of Rs.4,50,000/- minus (-) the last drawn wages paid under Section 17-B of the Industrial Dispute Act, to the respondent/second party, on or before 31/05/2022. A request for extension of time would not be entertained. While making such payment, a ready reference chart showing the calculation would also be served on the respondent/second party.

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11. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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