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

926 WRIT PETITION NO.11146 OF 2015

Dnyanoba s/o Namdeo Kasbe,
Age: 49 years, Occu: Labour work (majoori),
R/o. Bahegavhan, Post Wadwani,
Tq. Wadwani, Dist. Beed ...PETITIONER

VERSUS

1. The State of Maharashtra,
Social Forestry Department,
Mantralaya, Mumbai 400 032
2. Social Forestry,
Kaij, Tq. Kaij,
Dist. Beed,
Through : The Plantation Officer ...RESPONDENTS

...

Mr A. A. More, Advocate for petitioner;
Smt. V. S. Chaudhary, A.G.P. for respondent No.1

CORAM : RAVINDRA V. GHUGE, J

DATE : 24th March, 2022

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. On 01/12/2015, while issuing notice, I had passed the following order :-

“1. The petitioner is aggrieved by the impugned judgment and award dated 24.6.2015 by which

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Reference (IDA) No.23 of 2013 has been answered in negative. The petitioner worked as a Watchman on the respondent plantation scheme from 11.11.1982 and was terminated on 31.10.2008. An Industrial Dispute was raised after about five years. The Reference has been answered in the negative primarily on the ground that the respondent is not an industry under Section 2(j) of the Industrial Disputes Act, 1947.

2. Issue notice to the respondents, returnable on 21.12.2015.

3. Learned AGP waives service for respondent No.1.”

3. The learned A.G.P. representing the respondents vehemently submits that the petitioner was intermittently working on the Employment Guarantee Scheme. She points out paragraph 7 of the impugned order, which reads as under :-

“7. The non-disputed documents are at Ex.U-4. At Ex.U-4/1 is seniority list for 1990-91. The name of the second party is at Sr.No.20 and that date of appointment is as alleged. The document Ex.U-4/2 is the cash register. The document at Ex.U-4/3 speaks that in the year 1986-87 he worked for 313 days on scheme and other than scheme. Since 01.11.1987 to 31.10.1988 he worked on scheme and other than scheme for 156 days, 180 days for E.G.S. work, 01.11.1988 to 31.10.1989 he worked 120 days on scheme and other scheme and 148 days on E.G.S. work. Since 01.11.1989 to 31.10.1990

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and then till 01.11.2005 to 31.10.2006 he worked only on E.G.S. On 01.11.2006 to 31.10.2007 he worked on E.G.S. for 7 days. Since 01.11.2007 to 31.10.2008 he worked for 45 days on scheme.”

4. It is well settled that workers working on EGS cannot raise a claim for reinstatement/absorption/regularization/continued employment, etc. Following are the compilation of such Judgments:-

- (1) Arvind G. Chaudhari & anr. Vs. Dhanraj Nathu Patil & anr., 2008 (6) Mh.L.J. 746;
- (2) State of Maharashtra Vs. Bhausahab Nathu Falke, Etc., 2002 (1) Mah. LR 74 (SC);
- (3) Subhash Narayan Ahirrao Vs. Dy. Engineer P.W.D., Sub Division and anr., 1993 F.L.R. (Vol 66) 353;
- (4) Manabhau Damu Khairnar and ors. Vs. State of Maharashtra and ors., 1995 II C.L.R. 649;
- (5) Chief Executive Officer, Zilla Parishad, Ahmednagar Vs. Daulat Narsingrao Deshmukh and another, 2001 (2) Mh.L.J. 543;
- (6) Zilla Parishad, Ahmednagar Vs. Namdeo Natha Pawar (Writ Petition No.703/1997 with connected writ petitions) decided by this Court on 15/10/1999;

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(7) The State of Maharashtra & ors. Vs. Kakasaheb Bhausaheb Khandagale & anr. (Writ Petition No.847/1996 with connected writ petitions) decided by this Court on 30/08/2001;

(8) Sheshrao Patloba Waybase Vs The State of Maharashtra and anr. (Writ Petition No.2589/2012 with connected writ petitions) decided by this Court on 13/08/2015;

(9) Asaram Vitthal Shitre and anr. Vs. The State of Maharashtra and anr. (Writ Petition No.8359/2013 (with connected writ petitions) decided by this Court on 13/08/2015;

(10) Shri Ramchandra Kondiba Mahajan Vs The State of Maharashtra and others, (Writ Petition No. 2946 of 1997 decided by this Court on 19-07-2012).

5. The petitioner herein was before the Industrial Court in earlier round of litigation in Complaint (ULP) 127/1999. Following are the issues and the answers in the said proceedings:-

Sr. No.	Issues	Findings
1	Does complainant prove that he is 'workman' and there exists relationship of employer – employee between him	In the negative.

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	and respondent ?	
2	Does the complainant prove that respondent is an industry ?	In the negative.
3	Whether complaint is maintainable ?	In the negative.
4	Does complainant prove that he is employed as a normal labour and in each year has worked for more than 240 days continuously before filing complaint ?	In the negative.
5	Does respondent prove that the complainant was working as labour on EGS up to 1998 ?	In the affirmative.
6	Does complainant prove that the respondent has engaged in unfair labour practice by not regularizing his services ?	In the negative.
7.	What order ?	Complaint is dismissed as per final order.

6. Once it is concluded that the petitioner was working under the EGS and the said Judgment of the Industrial Court, having not been set aside as it was not challenged by this petitioner, the conclusion that he was working under the EGS upto 1998, cannot be contradicted today.

7. However, the order of reference in the instant case indicates the term of reference as under :-

“Shri. Dnyanoba Namdeo Kasbe (Watchman) should be reinstated with full back wages and continuity of service w.e.f. 31/10/2008”.

8. In view of the above, the Labour Court should have cast an issue, as to whether the respondent/first party can prove that the second party/workman was working under the EGS even from 1999 till 2008. This issue was neither framed, much less, adverted to. The Labour Court has concluded that the respondent is not an 'Industry' and hence, the Reference was answered in the negative. The learned Division Bench of this Court (Coram: A.S.Oak (as his Lordship then was) and M.S. Sonak,JJ.) in **Chief Conservator of Forest, Pune (T) and another Vs. Janabai Sonaba Sarpale, 2019 II CLR 28** has held that in the State of Maharashtra, the Department of Social Forestry is an 'Industry'. The matter referred to the Larger Bench by the Hon'ble Apex Court in **State of U.P. Vs. Jai Bir Singh, 2005 II CLR 534**, is yet to be adjudicated upon.

9. In view of the above, I deem it appropriate to remit the matter to the Labour Court. Hence this petition is partly allowed.

The impugned Award dated 24/06/2015 is quashed and set aside with the following directions :-

(a) The litigating parties shall appear before the Labour Court in Reference (IDA) No.23/2013, on 18/04/2022.

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(b) The Labour Court shall frame an issue as under :-

“Does the first party employer prove that the second party/ workman was working on EGS from 1999 onwards till 31/10/2008”.

(c) After the issue is framed, both the parties shall lead oral and documentary evidence and the said exercise shall be concluded, on or before 15/07/2022.

(d) The parties shall advance their oral submissions, which shall be concluded, on or before 20/08/2022.

(e) The Labour Court shall deliver it's Award, on or before 15/10/2022.

(f) The issue No.1 framed earlier would not survive and issue Nos. 2, 3 and 4 shall be considered along with the new issue cast, as directed above.

10. Rule is made absolute in the above terms.

11. No order as to costs.

(RAVINDRA V. GHUGE, J.)