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

907 WRIT PETITION NO.11680 OF 2014

The State of Maharashtra,
Through : The Deputy Conservator
of Forest/ [Divisional Forest Officer],
Van Bhavan, Nagar-Aurangabad Road,
Ahmednagar

...PETITIONER

VERUS

Shaikh Rajjak Sultan,
Age: 48 years, Occu: Labourer,
R/o. At Post Darodi, Tq. Parner,
District : Ahmednagar

...RESPONDENT

.....

Miss V. S. Chaudhary, A.G.P. for petitioner
Mr S. D. Joshi, Advocate for respondent

CORAM : RAVINDRA V. GHUGE, J

DATE : 8th March, 2022

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner/Deputy Conservator of Forest Department, Ahmednagar, is aggrieved by the Judgment delivered by the Labour Court, dated 13/07/2012, allowing Complaint (ULP) No.42/2006 filed by the respondent and granting reinstatement in service, with continuity and 25% backwages. The petitioner is

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also aggrieved by the Judgment of the Industrial Court, dated 01/04/2014, vide which, Revision (ULP) No.77/2012, filed by the petitioner/Department and Revision (ULP) No.82/2012, filed by the workman, have been dismissed. The Forest Department was held to be an 'Industry'. The order of reinstatement in service, with continuity and 25% backwages, has not been upset.

3. These litigating parties were before this Court in Writ Petition No.5797/2013, filed by the respondent/employee, wherein, though the Labour Court had earlier concluded that unfair labour practice was committed against the employee, he did not grant any relief. As Sub-clause (a) in Item No.1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, was not mentioned, by the Judgment dated 04/12/2013, this Court concluded in paragraph 7 as under :

“7. With the assistance of the learned Advocates, I have gone through the petition paper book and the impugned judgment. The Labour Court has, no doubt, come to the conclusion that the U.L.P. is proved against the respondent by way of victimization. The Industrial Court has not set aside that finding. Merely because the sub item “a” is not mentioned by the Labour Court in its judgment, would not nullify the conclusions drawn. The approach of the Industrial Court, Ahmednagar seems to be “hyper-technical”. In my view, when the Court has

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come to a conclusion clearly holding that the U.L.P. is by way of victimization, it needs to be understood that it is only item No. 1(a) that connotes 'victimization'. Whether it is mentioned or not, is not as significant as is the conclusion drawn by the Court. On this count, the judgment of the Industrial Court needs to be set aside."

4. There were three issues before the Labour Court. Firstly, as to whether the petitioner/Department is an 'Industry', secondly, whether the respondent/employee has completed 240 days in employment at the time of his retrenchment in one calendar year preceding thereto and thirdly, whether he is appointed on any scheme or on the Employment Guarantee Scheme (EGS).

5. Having considered the strenuous submissions of the learned Advocates for the respective sides and having gone through the petition paper book, it is apparent from the Judgment of Labour Court, dated 13/07/2012 that, though the petitioner alleged that the respondent was engaged as a daily wager under the EGS, the entire record pertaining to such engagement, has been destroyed. There was no record available with the Department to be produced before the Labour Court, to indicate that the respondent was working under the EGS. The Labour Court, therefore, rightly concluded that there is no evidence that the respondent was deployed under the EGS.

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6. Considering the above, the issue is, as to whether the petitioner disproved that the respondent was working as a daily wager for a long duration and completed 240 days in 12 calendar months, while being in daily wage services of the petitioner. It is noteworthy that, the respondent averred that he was engaged as a daily wager from 01/08/1991 and was orally terminated on 01/06/2006. The petitioner took a stand in its written statement Exh.C-6 that, no unfair labour practice is committed by the petitioner.

7. The respondent was initially working in the plantation and Nursery Section for a period of five years. As the Government ordered on 19/01/2006 that, no daily wager should be appointed as a 'Forest Guard', the respondent was disengaged. This would indicate that the respondent was engaged as a 'Forest Guard' and was not engaged as a 'Majdoor' for digging pits and ditches under the EGS. Moreover, there was no evidence to indicate that he was engaged under the EGS. The respondent/employee led evidence in support of his pleadings.

8. Insofar as, whether the petitioner is an 'Industry', though the issue has been referred to a Larger Bench of the Hon'ble

Supreme Court (five Judges Bench) in **State of U.P. Vs. Jai Bir Singh, 2005 II CLR 534**, the learned Division Bench of this Court [Coram : A. S. Oak (as His Lordship then was) and M. S. Sonak, JJ.), in the **Chief Conservator of Forest, 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'.

9. The Labour Court, after considering the pleadings of the parties and the evidence available, concluded that the respondent was working in between 01/08/1991 till 31/05/2006. The petitioner/Department only denied the contentions of the respondent through the written statement, and though it was assured to the Labour Court that relevant records, Muster Rolls, Wage Register would be produced, the Department produced none. In fact, it stated to the Labour Court that, if the Court directs, they would produce the record. Later on, affidavits Exh.C-6 and C-7 were filed contending that the records were destroyed.

10. In view of the above, I do not find any material on the basis of which, I could upset the findings on facts arrived at by the Labour Court, vide it's Judgment dated 13/07/2012. The

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respondent succeeded in proving that, he was working for around 14 years and 8 months as a daily wager, in the light of the Forest Department not denying the said aspect and failing to produce any record.

11. The learned A.G.P., however, submits that the respondent is out of employment since May 2006, for almost 16 years, and is around 56 years of age. She, therefore, submits that the reinstatement with continuity and 25% backwages may not be granted.

12. The learned Advocate for the respondent/employee had sought a pass over for taking instructions, and thereafter, makes a statement on instructions that, if this Court comes to a conclusion that reinstatement may not be practicable, the respondent is willing to accept compensation.

13. The Hon'ble Supreme Court, in similar set of facts, has concluded 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] that, the Court can quantify the compensation to be awarded to the employee, if reinstatement is impracticable. Such compensation should be in lieu of reinstatement in service.

14. The petitioner is the Forest Department and there can be no debate that the Forest Department is always short of funds. An amount of Rs.76,098/- has been deposited in this Court by the petitioner, in December 2015, under the orders of this Court, towards 25% backwages. In the above referred Judgments, the Hon'ble Apex Court has held that, depending upon the paying capacity of an employer, the compensation could vary between 25,000/- to 50,000/- and could be even more, if the financial strength the of the employer is very good.

15. The respondent has put in about 15 years in employment as a daily wager and is out of employment for almost 16 years. He has only four years to go for retirement. In these circumstances, amount of Rs.30,000/- per year of service, inclusive of Rs.76,098/-, with accrued interest, could be a fair compensation in lieu of reinstatement in service and all incidental and consequential benefits.

16. As such, this petition is partly allowed.

The impugned Judgment of the Labour Court, dated 13/07/2012 is partly modified, by replacing Clause 2 of the order, with the following :-

(a) The respondent shall be entitled for compensation in lieu of reinstatement in service, with continuity and 25% backwages @ Rs.30,000/- (Thirty Thousand) per year of service, for the 15 years of service put in by him as a daily wager.

(b). Since the Nazir Section of this Court has informed that the amount deposited by the petitioner in this Court with accrued interest is Rs.1,13,930/-, the said amount also can be withdrawn by the respondent, without conditions, under identification from the learned Advocate, with a recent colour photograph, copy of the Adhar Card or PAN Card and latest address proof.

(c) As such, an amount of Rs.3,40,000/- shall be paid by the petitioner/Department to the respondent, on or before 31/05/2022, on the following address, through a Demand Draft :

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“Shaikh Rajjak Sultan,
R/o. At Post Darodi, Tq. Parner,
Dist. Ahmednagar.”

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

(RAVINDRA V. GHUGE, J.)

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