

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

937 WRIT PETITION NO.11569 OF 2015

1. The State of Maharashtra,
Through : the Executive Engineer,
Mula Pathbandhare Division,
Aurangabad Road, Ahmednagar
 2. The Collector, Rehabilitation Officer,
Ahmednagar
- ...PETITIONERS

VERSUS

Kanta Baburao Kardile, Died, thr. L.R.s

1. Hirabai w/o Chandrakant @ Kanta Kardile –wife
2. Pandurang s/o Chandrakant @ Kanta Kardile – son
3. Sharad s/o Chandrakant @ Kanta Kardile – son
4. Anjana w/o Narayan Paighan – Daughter
All R/o. at post – Malegaon (Khurd),
Tq. Georai, Dist.Beed

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Smt. V. S. Chaudhari, A.G.P. for petitioner;
Mr P. V. Barde, Advocate for respondents

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.

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2. Leave to add prayer clause (B-1), for challenging the award dated 12/08/2013, delivered in Reference (IDA) No.4/2010. Addition be carried out forthwith.

3. The petitioners were first party in Reference (IDA) No.4/2010 before the Labour Court at Ahmednagar. By the impugned award dated 12/08/2013, the Reference case was answered in the affirmative. Though notice was served on the petitioners, they did not choose to participate in the proceedings and the award was delivered in their absence. Since the award was ex-parte, the petitioners approached the Labour Court preferring Misc. Reference (I.D.A.) No.2/2013, praying for recalling of the said award. Same is rejected vide the impugned order dated 04/02/2015.

4. It is settled law that, after the award is published by the appropriate Government, the Court, which delivered the award can entertain an application for recalling of the award, if an application is filed within 30 days from the date of publication by the appropriate Government. There is no significance of the date on which the award is pasted on the notice board of the Labour Court, to be considered as the date of publication. After 30 days, the Court becomes *functus officio* as the award becomes

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enforceable (read :- Dnyaneshwar Anantrao Kulkarni Vs. The Superintendent Engineer Public Works Division & ors., 2016 (6) ALL MR 35).

5. The award dated 12/08/2013 was published by the Appropriate Government on 19/10/2013 . The copy of the award was received by the petitioners with a covering letter dated 19/10/2013, on 16/11/2013. It is settled law that there are no two modes of publication of award as is the common misconception that, the appropriate Government publishes the award on the notice board and the Labour Court also publishes the award on it's notice board. The Labour Court has no jurisdiction under the Industrial Dispute Act, 1947 and the Rules framed thereunder, to publish the award. It is only the appropriate Government that can accept the award, suspend the award or reject the award. Once it accepts the award, it publishes it on the notice board and then dispatches copies to the litigating parties. If the letter received by the petitioners is dated 19/10/2013, the award can be said to be published on the said date by the appropriate Government.

6. In that view of the matter, Misc. Reference (IDA) No.02/2013, filed before the Labour Court on 06/12/2013 was beyond 30 days and the Labour Court has, therefore, become

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functus officio. Unfortunately, this was not brought to the notice of the Labour Court in the Misc. Proceedings. The impugned order dated 04/02/2015 is, therefore, nonest as the Labour Court did not have the jurisdiction after 30 days when the award was published by the Deputy Commissioner (Labour), Nashik/appropriate Government, on 19/10/2013.

7. However, as the petitioners have challenged the award by adding a prayer, I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

8. The respondent is said to have been working as a daily wager from 01/08/1981 (as a daily rated 'Watchman') in the Mula Patbandhare Vibhag, Up-vibhag No.1, Sonai. He was orally removed on 01/10/1984. He had even approached the District Collector, Ahmednagar, requesting for absorption in service and the District Collector informed petitioner No.1 to absorb the respondent in it's services. However, since that was not done, the respondent raised an industrial dispute and the same was registered before the Labour Court as Reference (I.D.A.) No.4/2010, after 26 years.

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9. The Labour Court relied upon the evidence affidavit Exh. U-6 filed by the respondent. Copy of the letter dated 20/11/1986, issued by the Collector was also produced. The Labour Court noted that, there was reference in the said letter of the District Collector, dated 20/11/1986 that the respondent was working as a daily wager since August 1981 to November 1982 and then upto December 1983.

10. Though there was no evidence before the Labour Court as regards the work performed by the respondent from January 1984 till 01/10/1984. There was material available to indicate that he worked from 01/08/1981 till December 1983, which is a period of around two years and five months.

11. In view of the above, this petition can be partly allowed only to the extent of the Labour Court erroneously concluding that the respondent was working till October 1984. The issue of relief, therefore, crops up. The respondent has worked for two years and five months. The Industrial dispute is raised after 26 years. He is out of employment for the last 39 years. In this situation, the direction of the Labour Court, granting reinstatement in service, with continuity and full backwages, ignoring all these factors, renders the order perverse.

12. Shri. Barde, the learned Advocate for the respondent/workman relies upon the following cases :-

- (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].

13. In these matters, the Hon'ble Supreme Court dealt with an identical situation of daily wagers, working for a short duration and being out of an employment for long periods. Compensation was found to be more practicable as the Hon'ble Supreme Court held that reinstatement in service would be impracticable. In these Judgments delivered between 2009 to 2013, compensation was quantified around Rs.25000/- to 30000/-, depending upon the paying capacity and financial condition of the employer.

14. The employer is the Mula Patbandhdare Division, which is an Irrigation Department. Considering the passage of time and life becoming dearer, the learned Advocate for the workman prays that compensation may be increased. The learned A.G.P. oppose

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the request and submits that the petitioners are public bodies and compensation will have to be paid from the public exchequer.

15. In view of the above, I am of the view that a quantified compensation for having worked for two years and 5 months, of Rs.1,25,000/- (Rs. One Lakh Twenty Five Thousand) would be appropriate compensation.

16. This petition is, therefore, partly allowed.

The impugned award dated 12/08/2013, is modified and in lieu of reinstatement of service, with continuity and full backwages, I am moulding the relief in terms of compensation of Rs.1,25,000/-, which the petitioners shall pay to the respondent, as expeditiously as possible and in any case, on or before 30/04/2022.

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

(RAVINDRA V. GHUGE, J.)