

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

WRIT PETITION NO.13705 OF 2017

BALU NIVRUTTI PAWAR
VERSUS
THE DEPUTY DIRECTOR SOCIAL FORESTRY BEED

...
Advocate for the Petitioner : Shri Shahane Pradeep L. a/w Shri Parag
Shahane
AGP for the Respondent : Shri A.A. Jagatkar
...

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 11th January, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the learned AGP for the respondent.

The petitioner, who claims to have been working continuously with the respondent as daily rated watchman on daily-wage basis and whose services were terminated without complying with the provisions of the notice and payment of retrenchment compensation, raises an industrial dispute. Reference (IDA) No.457/2010 was made to the Labour Court at Aurangabad by the Deputy Commissioner of Labour and the Statement of Claim came to be filed on 27.04.2011 seeking reinstatement, continuity of service and full back-wages. This resulted in passing of the award on 19.08.2013, by partly allowing the reference and directing the

employer to reinstate the employee (petitioner herein) in service with continuity from the date of his oral termination i.e. 01.04.1995 with 25% of back-wages.

The case of the petitioner is that this award was even published on the notice board by the Deputy Commissioner of Labour and has become enforceable after one month of its publication.

2. In November, 2013, the respondent moved an application before the Labour Court, which was numbered as Miscellaneous Reference (IDA) No.11/2013, praying for setting aside of the ex-parte award dated 19.08.2013. The petitioner/ employee strongly opposed the said application. The Labour Court, by order dated 17.07.2017, has allowed Misc. Reference (IDA) No.11/2013 subject to the costs of Rs.1000/-.

3. On perusal of the award, it can be discerned that the first party i.e. employer filed the Written Statement, but did not cross examine the second party/ employee nor adduced any evidence. Even no documents were placed on record by the first party. The Labour Court has recorded that both the parties remained absent and did not argue the matter on merits, but on perusal of the record, by referring to the photostat copies of the documents placed on record, the Labour Court arrived at the finding that the second party was in continuous service of the first party for the relevant period. It is also recorded by the Labour Court that no evidence is brought by the first party to show that it is not

an industry. The contention of the second party is that there was no compliance of Section 25-F, which resulted in granting reinstatement with continuity along with 25% of back wages. In the Misc. Reference for setting aside the award, the reason projected is that the matter was listed under the caption “dismissal in default” on three dates and therefore, the first party, assuming that the matter is over, did not participate in the proceedings. Alleging that the impugned award is illegal and untenable on account of an opportunity not being availed by the first party to adduce sufficient evidence, the award was termed as ex-parte and therefore, it was prayed to be quashed and set aside.

The Labour Court, on being satisfied with the reasons for setting aside the award, has passed the impugned order.

4. On perusal of the award as well as the order restoring Reference (IDA) to the Labour Court, would reveal that the first party did not actively participate in the proceedings and the Labour Court, on the basis of the documents placed on record by the second party, assumed the completion of 240 days and non compliance of the requirement of notice before terminating the services. Admittedly, there is no adjudication on merits as there is no evidence brought on record by the first party and the Labour Court has rightly restored the reference for affording an opportunity to the first party to bring relevant evidence on record.

I find no legal infirmity in the impugned order, but at the

same time, it must also be kept in mind that the second party is labourer, who is an employee and who was engaged on daily rated basis by the respondent/ Social Forestry Department and merely because there was negligence on the part of the respondent to effectively represent themselves in the IDA reference, the second party/ employee had to suffer. In the circumstances, the restoration of the reference proceedings ought to have been allowed by imposing heavy costs upon the respondent/ Department and a mere imposition of costs of Rs.1000/-, in my view, would not justify the lackadaisical approach on the part of the respondent/ Department.

5. In the result, the order dated 17.07.2017 passed by the Labour Court, Aurangabad restoring the Reference (IDA) No.457/2010 is, therefore, modified by imposing costs of Rs.25,000/- to be paid to the petitioner/ second party within a period of four weeks from today. On deposit of such costs, the Labour Court dealing with Reference (IDA) No.457/2010 shall dispose of the same within a period of six months from today. Writ Petition is, accordingly, disposed of.

kps

(SMT. BHARATI H. DANGRE, J.)