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

918 WRIT PETITION NO.6310 OF 2021

The Executive Engineer,
Minor Irrigation Division No.2,
Ghulewadi, Sangamner, Tq. Sangamner,
Dist. Ahmednagar

...PETITIONER

VERSUS

Ravidra s/o Prabhakar Bramhane,
Age: Major, Occ. Not known,
R/o. Gajanan Vasahat, Sangamner Road,
Tq Shrirampur, Dist. Ahmednagar

...RESPONDENT

...

Mr Anand Chawre, Advocate for petitioner;
Mr P. V. Barde, Advocate for respondent

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. The petitioner has put forth prayer clauses (B) and (C), as under :-

“B) By writ of certiorary or any other appropriate writ orders or directions, this Hon’ble Court may kindly be pleased to quash and set aside the impugned judgment and award dated 28.02.2019 (Exh. P) passed by the learned Labour Court in reference (IDA) No.90/1993 and consequently the reference (IDA)

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No.90/1993 may kindly be rejected and for that purpose necessary orders be passed.

C) Pending hearing and final disposal this writ petition, this Hon'ble Court may kindly be pleased to grant stay to the effect, execution and operation of the impugned judgment and award dated 28.02.2019 (Exh. P) passed by the learned Labour Court in reference (IDA) No.90/1993."

3. The undisputed factors are as follows :-

(a) The respondent was working on daily wages from 17/12/1979 till 11/08/1982 with the erstwhile Department of the petitioner known as Minor Irrigation Sub-Division-2, Sangamner.

(b) He was transferred to the petitioner/Department on 11/08/1982 and has been orally terminated on 09/02/1985.

(c) He has, thus, worked for around 5 years and two months.

(d) After his oral disengagement on 09/02/1985, he raised an industrial dispute in 1993, which was referred to the Labour Court as Reference (IDA) No.90/1993

(e) The petitioner filed it's written statement.

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- (f) The Labour Court answered the Reference in the negative, vide Judgment and Award dated 25/07/2000.
- (g) The respondent approached this Court in Writ Petition No.1192/2005.
- (h) By an order dated 10/05/2018, the Award was set aside and the Reference Case was remitted for proper consideration.
- (i) On 27/06/2018, the respondent amended the statement of claim.
- (j) On 27/07/2018, the petitioner filed it's additional written statement.
- (k) On 28/02/2019, by the impugned Award, the Labour Court answered the Reference partly in the affirmative and issued the following directions :-

“1. The reference is answered in partly affirmative.

2. The act of the First Party terminating the service of Second Party w.e.f. 09/02/1985 is hereby declared as illegal and against the provisions of law.

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3. The First Party is hereby directed to consider the case of the Second Party in accordance with the Government Resolution dated 01.12.1995 and 21.4.1999 and subsequent Resolutions and Circulars dealing with the questions of regularisation and absorption of the Mustering Assistants; for the purpose of extending the benefits of continuation in service since 09.02.1985 and after retirement benefits, but, without back wages.

4. Four copies of this Award be sent to the Dy. Commissioner of Labour, Nashik Division, Nashik for publication.

5. No order as to costs.”

4. I have considered the extensive submissions of the learned Advocates for the petitioner and on behalf of the respondent. In the alternative, the respondent prays that this Court may quantify the compensation to be paid to the respondent, in lieu of service benefits, by referring to the Judgments delivered in 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].

5. The learned Advocate for the petitioner has vehemently opposed the grant of compensation on the ground that the respondent was working under the Employment Guarantee Scheme (EGS), and as such, he could not have approached the Labour Court or the Machinery under the Industrial Disputes Act, in the light of catena of Judgments of the Hon'ble Apex Court, concluding that the EGS employees do not have a right to seek reinstatement, regularization, absorption, continued employment, etc.

6. I find that the main thrust of the petitioner's case is that, the respondent was an employee under the EGS, and therefore, the Reference addressed to the Labour Court was unsustainable. He points out an Office Order No.11 of the year 1984 wherein, the respondent's name is at Sr. No.1 to indicate that he was working under the EGS. An order dated 21/10/1985 is pointed out indicating the name of the respondent at Sr. No.35. However, this document is not confronted to the respondent and he never had an opportunity to meet this document before the Labour Court.

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7. I find from the observations of the Labour Court in the impugned award from paragraph 12 on-wards that, the petitioner/first party had put forth a positive assertion that the respondent/second party was rendering service under the EGS. The first party produced certain documents on record at list Exh. C-25. The Labour Court considered each document below the list and noticed that the seniority list maintained by the Tahsildar, Rahuri, Exh. C-25/1, mentions the name of the second party at Sr. No. 35, though it does not indicate that he was an EGS daily wager. The Court then considered Exh. C-25/2 that was published by the Tahsildar and not by any officer under the EGS. The document at Exh. C-25/2 as well as C-25/1 are of no assistance to the petitioner and hence, the Labour Court rightly concluded that these documents are not helpful to the first party/petitioner.

8. The witness for the first party/petitioner, Rajan Darange, had filed an affidavit in lieu of examination-in-chief wherein, he admitted that there is no document in the form of an order of the Collector or Tahsildar to show that the second party/respondent was provided with the work of Mustering Assistant under the EGS. The documents like Pay-Sheets, Cash-Book or Ledger

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Book pertaining to the respondent/second party were not produced. The witness had no information as to whether the respondent was enrolled under the EGS. No Job Card under the EGS was provided to him. The witness admitted that the salary of the second party was being paid on monthly basis. The Labour Court further noted that the first party/employer could have produced Cash-Books, Salary-Pay Receipts, EGS Registers and documents relating to Job Cards issued under the EGS. In the absence of any evidence, save and except the assertion, the petitioner could not prove that the respondent was an employee under the EGS.

9. In view of the above, the controversy as regards, whether the respondent was an EGS employee or not, has been put to rest. Surprisingly, though the Labour Court has concluded that the termination of the respondent was bad in law, no substantive relief was granted since this Court had earlier ordered that, it should consider whether he is covered by the Government Resolutions dated 01/12/1995 and 21/04/1999. The petitioner has not undertaken this exercise. It is, however, submitted that the respondent will not be covered by the said Government Resolutions.

10. This creates a peculiar situation. It is not proved that the respondent was working under the EGS. Having worked for around 5 years, and having been out of employment for the last 35 years, it would be wholly impracticable to consider, whether any relief of reinstatement in service, continuity and backwages could be granted. The respondent has crossed the age of superannuation. In these circumstances, having litigated from 1993 till today, for a period of almost 19 years, and as reinstatement in service with continuity would be impracticable, I find that the compensation could be quantified so as to grant an equitable relief to the respondent.

11. In the four cases cited above, the Hon'ble Apex Court has considered compensation between Rs.30,000/- to 50,000/- per year of service, considering the capacity of the employer to pay the same. In the instant case, it is the Minor Irrigation Division No.2, Sangamner, which is before this Court. I have my doubts in the light of the assertion by the petitioner, as to whether the petitioner can be said to be a cash rich organization. In these circumstances, granting compensation @ Rs.30,000/- for the period of 5 years, aggregating an amount of Rs.1,50,000/-, would be an appropriate compensation.

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

13. The directions set out at Clause (3) of the Award, are quashed and set aside and the petitioner is directed to pay an amount of Rs.1,50,000/- as quantified compensation, to the respondent, in lieu of reinstatement in service, continuity and backwages, on or before 30/06/2022, failing which, interest @ 6% p.a. from the date of the award shall be payable and the interest component shall be paid from the salary of the petitioner Executive Engineer.

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

(RAVINDRA V. GHUGE, J.)

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