

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7880 OF 2017

Ramsingh Batu Dhande
Aged about 51 years,
R/o At Post Tatra, Tq. Dharni, Distt.
Amravati.

...PETITIONER

---VERSUS---

1. Chief Executive Officer,
Zilla Parishad, Amravati.
2. Deputy Engineer,
Zilla Parishad, Minor Irrigation, Sub-
Division Dharni, Distt. Amravati.

...RESPONDENTS

Shri N.R. Saboo, Advocate for the petitioner.
Shri M.G. Rathi, Advocate for respondents.

CORAM : AMIT BORKAR, J.
DATED : AUGUST 24, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith with consent of parties.
2. By this writ petition, the petitioner is seeking modification of award dated 22nd June 2017 passed by Labour Court, Amravati in Reference (IDA) No.3 of 2010.
3. The petitioner was engaged as a Labour by the respondents in 1990. According to the petitioner, the employees of the

Irrigation Department run by Zilla Parishad are governed by the provisions of the Kalelkar Award. Therefore the petitioner was entitled to be transferred to CRT after completion of five years. However, the services of the petitioner were terminated w.e.f. 31st January 1999 in breach of Sections 25F and 25G of the Industrial Disputes Act (for short, “**ID Act**”. The petitioner filed an application under Section 2A of the ID Act requesting conciliation. Due to the failure of conciliation proceedings dispute was referred to Labour Court, Amravati. Both parties filed their claim and written statement before the Labour Court.

4. During the pendency of the complaint, the petitioner filed an application seeking direction against respondents to produce a muster roll of daily wager employees worked for the period from 1985 to 2002, payment vouchers, cash book, seniority list of daily wager employees working in Minor Irrigation Department and service book of Anil Harni, Chetan Kale and other employees.

5. On 17th August 2016, the Labour Court passed an order directing respondents to produce the documents as sought. The petitioner examined himself and stated how provisions of Sections 25F and 25G of the ID Act are violated by the respondents.

6. The Reference Court, by order dated 22nd July 2017,

answered the reference in the affirmative, holding that respondents have engaged in unfair labour practice and found a violation of Section 25F and Section 25G of the ID Act. However, while passing the award dated 22nd July 2017, the learned Labour Judge granted relief of compensation of ₹25,000/- instead of a claim for reinstatement. The petitioner has therefore filed the present petition.

7. Shri N.R Saboo, the learned Advocate for the petitioner, submitted that the Kalelkar Award covers the petitioner's case. Therefore, after completing five years of services, the petitioner is entitled to CRT benefits. It is submitted that Kalelkar Award specifically provides that after bringing such an employee to CRT establishment, the post is automatically created. After the retirement of such an employee, the post is abolished. He also submitted that junior employees, namely; Anil Harni, Chetan Kale, and Gajanan Pound, who were engaged in 1994-95, are still working with the respondents. Therefore, the respondents have violated Section 25G of the ID Act. There is no evidence of non-availability of work. Therefore, the Labour Court ought to have granted reinstatement.

8. *Per contra*, learned Advocate for the respondents invited my attention to a chart annexed along with an affidavit-in-reply to

urge that the petitioner never worked continuously for more than 240 days prior to the termination. On the contrary, he was co-radical in the said work. He submitted that the petitioner's appointment was not following due procedure, and the respondent being a public body, respondents needed to follow statutory procedure.

9. Having reflected on the submission made by both sides, it appears that the Labour Court has recorded a finding that due to the non-production of muster roll, adverse inference needs to be drawn against respondents. The Labour Court, therefore, recorded a finding that the petitioner worked for more than 240 days. On the contrary, it is recorded by the Labour Court that the employer failed to prove that the employee did not work for more than 240 days prior to termination. Labour Court additionally recorded the finding that the respondents retained juniors to the petitioner, and therefore, termination of the petitioner is in breach of Section 25G of the ID Act. Finally, the Labour Court recorded the finding that in the absence of specific pleading and evidence, it cannot be presumed that the work is still available to the respondents.

10. Shri N.R. Saboo learned Advocate for the petitioner, relied upon the judgment of the Apex Court in the case of **Bharat**

Sanchar Nigam Ltd. Vs Bhurumal¹. The Apex Court, in paragraph 25 of the said judgment, observed as under:

“25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

11. In the facts of the present case, the petitioner is covered by the Kalelkar Award and therefore was required to be brought on CRT establishment after five years. On the other hand, the junior persons in the complaint were allowed to continue with the service. Therefore, the Labour Court was not justified in asking for payment of compensation instead of reinstatement. I, therefore, pass the following order:

The order of payment of compensation to the petitioner is modified by directing respondents to reinstate

1 2013 DGLS(SC) 998

the petitioner. In the facts of the case, the petitioner shall be entitled to back- wages from the date of award, i.e. from 22nd June 2017.

Rule is made absolute in the above terms. No costs.
Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh