



(1)

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

WRIT PETITION NO. 15117 OF 2023

Prakash Shamrao Bhagat,
Age: 68 years, Occ: Agri.,
R/o Lohara, Tq. Lohara,
Dist. Osmanabad

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Irrigation Department, Mantralaya,
Mumbai
2. Asst. Labour Commissioner,
Latur, Tq. and Dist. Latur
3. Dy. Labour Commissioner, Aurangabad,
Near baba Chowk, Aurangabad,
Tq. and Dist. Aurangabad
4. Godavari Marathwada Irrigation
Development Corporation,
Through Superintending Engineer,
Administrative CADA, Beed,
District Beed

....RESPONDENTS

AND

WRIT PETITION NO. 12128 OF 2022

Dinkar Yeshwant Jadhav,
Age: 68 years, Occu: Agri.,
R/o Karajgaon, Tq. Omerga,
Dist. Osmanabad

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Irrigation Department, Mantralaya,
Mumbai

(2)

2. Asst. Labour Commissioner,
Latur, Tq. and Dist. Latur
3. Dy. Labour Commissioner, Aurangabad,
Near baba Chowk, Aurangabad,
Tq. and Dist. Aurangabad
4. Godavari Marathwada Irrigation
Development Corporation,
Through Superintending Engineer,
Administrative CADA, Beed,
District Beed

....RESPONDENTS

....

Mr Suraj V. Gundre, Advocate for Petitioners;
Mr A. B. Girase, G.P. for Respondent Nos.1 to 3

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRADE, JJ.**

DATE : 21st December, 2023

ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the respective parties.

2. In both these Writ Petitions, the Petitioners are aggrieved by the in-action on the part of the statutory authorities under the Industrial Disputes Act, 1947 in relation to the demand notices of the Petitioners. Though the Petitioners have raised an industrial dispute through a demand notice under Section 2-A of the Industrial Disputes Act, 1947 (for short 'the said Act') in

(3)

2018, which admittedly is received by the office of the Government Labour Officer, Latur (GLO) on 26/10/2018, the Petitioners are compelled to approach this Court for seeking directions, to the Appropriate Government (Deputy Commissioner Labour, Aurangabad) to pass an order.

3. Both these Petitioners had approached the Labour Court under the MRTU & PULP Act, 1971 for challenging their oral terminations, after 14 years delay. On the ground of delay, they suffered adverse orders and approached the learned Single Judge of this Court in Writ Petition Nos.4090/2003 and 4091/2003, which were decided on 07/08/2015. In paragraph No.10 of the order passed in the Writ Petitions, the learned Single Bench of this Court permitted the Petitioners to raise an industrial dispute under Section 2-A of the said Act, keeping in view that there was a 14 years delay in filing a Complaint (ULP) before the Labour Court in the backdrop of the limitation of only 90 days.

4. Thereafter, the Petitioners submitted their demand notices dated 29/01/2016 before the Government Labour Officer at Latur. Since, they could not gather the fate of these

(4)

proceedings, they approached this Court for directions under Article 226 for issuance of a Writ of Mandamus.

5. We appreciate the efforts taken by the learned Government Pleader Shri. Girase in placing before us the original files pertaining to the demand notice of these two Petitioners. On perusing the original files, it is obvious that the Conciliation Officer submitted a failure report on 26/10/2018 to the Deputy Commissioner (Labour), Chhatrapati Sambhajnagar. We are informed that the Deputy Labour Commissioner, Chhatrapati Sambhajnagar joined duties on 28/07/2021.

6. While perusing the original files, we noticed a report prepared by the office of the Conciliation Officer. The same is signed by him. The remark below his report indicates the proposed decision of the DyCL. However, the files are believed to be pending with the Deputy Labour Commissioner. The typed order/remark at the bottom indicates as “*decision taken by Deputy Commissioner (Labour) REFUSED*”.

7. It is surprising that the said conclusion/decision does not carry the signature of the Deputy Labour Commissioner. In fact, the Conciliation Officer had rightly submitted a confidential

(5)

report that, as the case is with regard to termination, the matter should be referred to the Labour Court at Latur.

8. It does not call for any debate that, an industrial dispute under Section 2-A of the I.D. Act, 1947 has to be taken up in conciliation and either has to be closed with a settlement or, upon failure, has to be referred to the Competent Court for adjudication. Section 2-A defines an Industrial Dispute pertaining to termination of services, as under :-

[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.--

[(1)]Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2)Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate

(6)

Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]

[Emphasis supplied]

9. It is, thus, clear that, a dismissal/termination/removal, etc. of an individual workman is deemed to be an industrial dispute, whether there is a discharge/dismissal/ retrenchment/ termination. This would even include an oral termination which can be said to be otherwise termination. In this backdrop, the Deputy Labour Commissioner cannot refuse to refer the Dispute to the Labour Court for adjudication, since Section 2A provides such a dispute to be a deemed industrial dispute.

10. Though the learned Government Pleader has tried to convey to the Court on instructions from the Authorities present in the Court that, the files were not deliberately kept pending, he graciously concedes that, an order should have been passed expeditiously.

11. In view of the above, **both these Writ Petitions are disposed off**, with a direction to the Deputy Labour Commissioner, Chhatrapati Sambhajinagar, to pass an order of referring the industrial dispute, concerning these two Petitioners, under Section 2-A of the said Act, to the Labour Court, Latur within 15 days from today.

12. We could have ordered costs to be paid by the Deputy Labour Commissioner to each of these two Petitioners. However, the learned Government Pleader pleads for leniency on the ground that the said officer has recently taken charge. The learned Advocate for the Petitioners consents.

13. Before parting with this matter, we deem it appropriate to direct the Deputy Labour Commissioner, Chhatrapati Sambhajinagar, to issue instructions to the Assistant Labour Commissioner/GLO, within his jurisdiction, not to keep the disputes pending, inasmuch as, he shall trace out from his office, whether any failure reports are pending orders and appropriate orders on such matters shall be passed by the Deputy Labour Commissioner within 45 days from today.

(8)

14. Rule is discharged.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

sjk