

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2222 OF 2010

- 1 The State of Maharashtra
Through The Executive Engineer,
Mechanical Division,
Tillarinagar, HQ, Kolhapur.
- 2 The Deputy Engineer,
Mechanical Sub Division No.6,
Near Income Tax Building,
Tarabai Park, Kolhapur – 416 0003.

 V/S

Shri Shatrughna Arjun Gavas,
R/o Shirange, Tal. Dodamarg,
District Sindhudurg.Respondent

Mr. S.H. Kankal, AGP for the Petitioners/State.
Mr. Santosh S. Gavade for Respondent.

CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 28 JUNE 2024.
PRONOUNCED ON: 03 JULY 2024.

JUDGMENT

1 The State Government has filed this Petition challenging the Award of
Labour Court, Ratnagiri, dated 24 June 2009 by which the Reference relating
termination and reinstatement of the Respondent has been partly answered in
the affirmative and the Labour Court has directed reinstatement of the

Respondent in service as per the Consent Terms dated 27 January 2004 as well as order passed by this Court in Writ Petition No.2300 of 1997. The prayer for back-wages is however rejected.

2 Briefly stated, facts of the case are that Respondent is a project affected person as his father's land at village Shirange, Taluka Dodamarg, District Sindhudurg has been acquired for Tillari Irrigation Project. He has been issued certificate of project affected person on 3 January 1990 by the District Resettlement Officer, Sindhudurg Collectorate. According to Respondent, as per various Government Resolutions as well as provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 **(the Act)** Respondent was offered appointment and accordingly he came to be orally appointed on 21 January 1991 on daily wages basis. He was retrenched on 21 June 1991 and was again called back to work on 20 November 1991. He was again retrenched on 21 June 1992. It appears that Sindhudurg Zilla Rajya Sahakari Karmachari Sanghatana, Sindhudurg Kudal Project Branch filed Complaint (ULP) No.94 of 1993 before the Labour Court, Kolhapur on behalf of 28 employees at Tillarinagar Office under the control of Superintending Engineer, Mechanical Division, Kolhapur. The Union sought reinstatement of the said 28 workers who were terminated on 5 December 1992. Complaint (ULP) No.94 of 1993 was allowed by Labour Court, Kolhapur by its judgment and order dated 11 July 1995 directing reinstatement of the said 28 workers with continuity of service and backwages. The Industrial Court, Kolhapur dismissed the Revision Application filed by Petitioner/State by judgment and order dated 9 January 1997. The Industrial Court however directed that Petitioners would be at liberty to employ the enlisted workers on any other project if work was

not available at Tillari Irrigation Project. Petitioner/State filed Writ Petition No.2300 of 1997 in this Court challenging the decisions of the Labour and Industrial Courts. On 27 January 2004 Consent Terms were filed before this Court agreeing that the said 28 workers would be appointed on Converted Regular Temporary Establishment (**CRTE**) on the same post from the date of completion of five years of service as per the Kalelkar Award and as per Government Resolution dated 24 January 2001 of PWD. The members of the Union agreed not to claim wages/benefits in respect of the period they were not in service. The Writ Petition was disposed of on 27 January 2004 in view of the Consent Terms. The order of this Court and Consent Terms were implemented by the State Government by issuing order dated 30 May 2005 by which the said 28 employees were taken on CRTE status on completion of five years of service from the date of initial employment.

3 In the above background, Respondent made representation on 27 January 2004 for reinstatement with backwages. The demand of the Respondent was taken in conciliation by the Government Labour Officer, Sindhudurg and both parties were called by letter dated 6 January 2005. Petitioner/State informed the Government Labour Officer that it was not possible to reinstate the Respondent in service. The Government Labour Officer therefore submitted failure report dated 3 May 2007. The Additional Commissioner of Labour, Mumbai made reference to Labour Court, Ratnagiri by order dated 13 June 2007 relating to reinstatement, backwages and continuity of Respondent. The reference was registered as Reference (IDA) No.4 of 2007. Respondent filed Demand Note dated 11 January 2008 before the Labour Court seeking reinstatement from 21 January 1992 with

backwages and continuity. The Demand Note was resisted by Petitioner/State by filing Written Statement stating that Respondent rendered only two spells of service from 21 January 1991 to 21 June 1991 (133 days) and 20 November 1991 to 21 June 1992 (181 days). It was stated that on account of monsoon and suspension of earthwork, Respondent voluntarily stopped attending duties. Respondent examined himself as a witness. Petitioners/State examined Shri Jayant Vishnu Khade, Deputy Engineer, Mechanical Sub Division No.6, Kolhapur.

4 After considering the evidence on record, Labour Court, Ratnagiri has delivered Award dated 24 June 2009 answering the Reference partly in the affirmative and directing Petitioners/State to reinstate Respondent in service as per the Consent Terms dated 27 January 2004 as well as order passed by this Court in Writ Petition No.2300 of 1997. The prayer of Respondent for backwages is however rejected. Aggrieved by Labour Court's Award dated 24 June 2009 Petitioners/State have filed the present Petition.

5 Initially by order dated 20 July 2010, this Court directed maintenance of *status quo* by the parties. Later, the Petition was admitted by order dated 5 October 2010 and interim relief was granted in terms of prayer clause (b) thereby staying the execution of operation of Award dated 24 June 2009 during pendency of the Petition.

6 Mr. Kankal, the learned AGP appearing for Petitioners/State would submit that the Labour Court has erred in granting the relief of reinstatement to Respondent by comparing him with the 28 employees involved in Writ

Petition No.2300 of 1997. That case of the said 28 workers is entirely different. That Respondent rendered only two spells of service of 133 and 181 days and that he admittedly did not render 240 days of service in any calendar year. That in case the 28 workers, specific finding was recorded by the Labour Court, Kolhapur about completion of 240 days of service by them. That the said 28 workers had rendered 240 days of service prior to their termination on 5 December 1992. That some of them had worked since the year 1987 for over five years. That therefore there is absolutely no comparison between the Respondent and the said 28 workers. He would further submit that interim order was passed in the case of the said 28 workers by Labour Court on 19 May 1993, on account of which they continued to remain in service till Consent Terms were filed in this Court on 27 January 2004. Thus, the said 28 workers continued to work for a considerable period of time from 1987 till 2004 when Consent Terms were arrived at between the parties. The Respondent in the present case hardly rendered 133 + 181 days of service in two broken spells and did not bother to raise any grievance in respect of his termination for over 12 long years. That the last service rendered by him was on 20 June 1992 and the grievance with regard to his termination was raised by him for the first time after 12 years later by making a representation for the first time on 1 October 2004. That the Labour Court has erred in entertaining the Reference and in answering the same in the affirmative ignoring the fact that the Respondent slept over his alleged rights for over 12 long years. He would submit that for having rendered merely 133+181 days of service in two broken spells, no right got created in favour of Respondent to claim the relief of reinstatement. He would pray for setting aside the impugned Award of the Labour Court.

7 *Per contra*, Mr. Gavade, the learned counsel appearing for Respondent would oppose the Petition and support the impugned Award of the Labour Court. He would submit that the case of the Respondent is identical as that of the other 28 workers, who are not just reinstated in service but are granted CRTE status as per Kalekar Award. That Respondent has worked alongwith the said 28 workers as Helper in the said Tillari Irrigation Project and there is no reason why Respondent should be granted a different treatment. He would further submit that Respondent admittedly is the Project Affected Person and is entitled to grant of employment towards compensation as per provisions of section 6(c) of the Act. That as per the said Act, it is incumbent on the Petitioners/State Government to offer job to a project affected person, that the Respondent was accordingly offered appointment as Helper in his capacity as project affected person. That since the appointment was in capacity as project affected person, Respondent could not have been terminated so long as he was willing to work. He would rely upon judgment of this Court in ***Executive Engineer, Med. Proj. Division Nagpur and another vs. Member, Industrial Court, Nagpur and another***, (2008) 1 Mah LJ 697, in support of his contention that the Project Affected Person is required to be absorbed once appointed in that category and could not be terminated. He would also rely upon judgment of this Court in ***Suresh Tikaram Pustode vs. State of Maharashtra and others***, (2004) 1 Mah LJ 157, in support of his contention that the State Government must honour its commitment and provide job to project affected person as assured under the Government Resolution dated 21 January 1980. He would rely upon order passed by the Apex Court in ***Raman Kumar & Ors. Vs. Union of India & Ors.*** SLP (C) No.7898 of 2020 decided on 3 July 2023 in support of his contention that the

act of regularizing services of some employees and not regularizing the services of others is discriminatory and violative of Article 14 of the Constitution of India. Relying on the judgment of Orissa High Court in **Partha Sarathi Dash vs. State of Odisha & Ors.**, in Writ Petition (C) No.8092 of 2016 decided on 21 March 2023, he would submit that the principle of 'No Work No Pay' cannot be invoked where the employees willing to work. Lastly Mr. Gavade, rely upon judgment of the Apex Court in ***State of Maharashtra and another vs. Sarva Shramik Sangh, Sangli and others***, (2013) 16 SCC 16, in support of his contention that the Irrigation Department is an Industry under section 2(f) of the Industrial Disputes Act, 1947 (**ID Act**). Mr. Gavade would submit that the Labour Court has not committed any jurisdictional error so as to warrant any interference by this Court in the impugned award. He would pray for dismissal of the Petition.

8 Rival contentions of the parties now fall for my consideration.

9 The Labour Court has taken into consideration the Consent Terms filed in this Court in Writ Petition No.2300 of 1997 on 27 January 2004 for granting the relief of reinstatement to the Respondent. It would be therefore necessary to consider the exact Consent Terms filed before this Court and the background leading filing of Writ Petition No.2300 of 1997. Petitioners/State have placed on record copy of Complaint (ULP) No.94 of 1993 filed by the Sindhudurg Zilla Rajya Sahakari Karmachari Sanghatana, Sindhudurg, Kudal Project Branch. The Complaint was filed on behalf of 28 employees, who were members of Union and whose details were enclosed in a list annexed to the Complaint. Though the said list is not placed on record, order dated 30

May 2005 issued for implementation of the Consent Terms reflect the dates of initial appointments of the said 28 employees. It appears that the said 28 employees were appointed on various posts such as Clerk, Helper, Driver and Chowkidar in Tillari Nagar Office coming under the Superintending Engineer, Mechanical Division, Kolhapur. The Complaint alleged that the said 28 employees were terminated on 5 December 1992. That before termination of their services they completed 240 days of service. The termination was oral by preventing the said 28 employees from reporting to work on 5 December 1992. The Labour Court, Kolhapur passed interim order dated 19 May 1993 on application at Exhibit-U2 directing to allow seven workers to join their duties. So far as the rest of the employees were concerned, the prayer for interim relief was rejected. While considering the application for interim relief the Labour Court considered the chart produced by the Respondents therein (Petitioners herein) which reflected that the said seven employees had completed 240 days service before termination. The rest of the employees were *prima-facie* not found to have completed 240 days of service. This is how the interim relief was restricted only to the seven employees.

10 The Labour Court, Kolhapur thereafter decided the Complaint (ULP) No.94 of 1993 finally by its judgment and order dated 11 July 1995. The Labour Court considered the evidence on record and arrived at a finding that all the 28 workers had nearly completed 240 days service prior to their termination. The relevant findings recorded by the Labour Court in paragraph 13 of its judgment is as under:

“13 The Respondent has produced on record the statement showing the details of working days of all those employees. **All of them have worked near about 240 days in a year.** They were paid the wages on the basis of per day wage. The chart shows that these employees were working from the year 1987-88. Some of them were working from the year 1909 and 1990 and their date of appointment are shown in the chart. They are working in different capacity with the respondent as clerk, driver or helper. The chart also shows that Shri Rajaram Krishna Savant whose name is at Sr. No.25 in the chart has expired. All these employees got the appointments on the same site on the basis of being a project affected person. Their lands were acquired by the Govt. for the site. The chart of payments of the overtime is also produced by the Respondent by which the payment of overtime is shown. The hours of overtime are also shown in this chart.”

(emphasis supplied)

11 Thus the Complaint came to be allowed after holding that the 28 employees had completed near 240 days of service. Accordingly, Respondents therein were directed to reinstate all the 28 employees with continuity of service and full backwages. So far as the seven employees who were permitted to join as per interim order dated 19 May 1993 were concerned, they were held to be entitled backwages only for the intervening gap period.

12 The judgment and order passed by the Labour Court on 11 July 1995 was unsuccessfully tested by the Petitioners herein before the Industrial Court, Kolhapur. It appears that during pendency of the proceedings, the employee at serial No.25 passed away. The Industrial Court dismissed the Revision filed by the Petitioners. However, liberty was granted for employment of the enlisted workers at any other project, in case work was not available at Tillari Irrigation Project.

13 Petitioners filed Writ Petition No.2300 of 1997 in this Court. In the said Petition Consent Terms were filed on 27 January 2004, which read thus:

The Petitioner and the Respondent have mutually agreed to file the Consent Terms on the following terms and conditions.

1 The members of the Respondent - Sanghatana are presently working on daily wages. The Petitioner says that the workers will be appointed on C.R.T., i.e. Converted into regular temporary establishment, on the same posts, With effect from 5 years continuous service from their appointments, as per the terms and conditions of the Kalelkar Award, and as per the Government Resolution No CRT/1596/220/Service-5, dated 24.04.2001, of the Public Works Department.

2 The Petitioner agrees that the members of the Respondent-Sanghatana are to be appointed on CRT establishments, on the posts held by them, with effect from the 5 years continuous service since their first appointment, as per the Kalelkar Award.

3 The member of the Respondent have given on undertaking that they will not demand any arrears of salaries and/or interest thereon, directly or indirectly, for the period of absence from service.

4 The members of the Respondent Sanghatana also undertake not to claim any wages/benefits in respect of the period during which they were not in employment with the Petitioner.

5 The Respondent employees admit that they shall claim any benefits or claims in the proceedings arising out or challenged in this Writ Petition or any other incidental/ancillary benefits in future and will not file any proceedings in the Court, for the same.

6 These consent terms have been signed by the Respondent willingly and without any pressure or coercion.

In view of these consent terms, the Hon'ble Court be pleased to dispose off this writ petition."

14 Thus, the concerned 28 workers were directed to be reinstated in service after recording a finding that they had completed 240 days of service and that they were terminated without compliance of the provisions of section 25F of the ID Act. Since the litigation remained pending before this Court till the year 2004 and the concerned employees apparently continued

to work during interregnum, it appears that the State Government decided to grant them the benefit of Kalelkar Award by taking them on CRTE on completion of five years of service from the date of initial engagement. This was done on the basis of Government Resolution dated 24 April 2001 applicable for PWD. Accordingly, order came to be issued on 30 May 2005 bringing 26 employees on CRTE on the date of completion of five years of service from the date of their respective initial engagements. It appears that two employees were no longer available by the time order dated 30 May 2005 was issued.

15 Respondent woke out of his deep slumber only after Consent Terms were filed before this Court on 27 January 2004. He made first representation relating to his termination on 1 October 2004. The last date of service performed by him was 20 June 1992. Thus the grievance with regard to termination and reinstatement was raised after lapse of period of 12 long years by Respondent.

16 There is no dispute to the position that Respondent rendered only two spells of service from 21 January 1991 to 20 June 1991 (133 days) and from 21 November 1991 to 20 June 1992 (181 days) (total 314 days). A certificate to that effect is placed on record. There is also no dispute to the position that the Respondent was not in service during the gap period from 21 June 1991 to 20 November 1991. Thus, it was proved before the Labour Court that Respondent did not render 240 days of service in a year. It is therefore incomprehensible as to how any comparison can be made between Respondent and the 28 employees involved in Complaint (ULP) No.94 of

1993. The Labour Court has recorded a finding in para 9 of the impugned Award that as per the chart produced by the Petitioners/State as well as the admission given by Shri Jayant Khade (Petitioner's witness) in the cross-examination that none of the 28 employees had completed 240 days of service. I have perused the cross-examination of the witness Jayant Khade. In his cross-examination the witness has stated that he could not indicate as to whether the 28 workers in Complaint (ULP) No.94 of 1993 had completed 240 days of service. It is thus therefore erroneous to assume that there is any admission by the said witness that none of the 28 workers had completed 240 days of service. In my view the Labour Court has committed a gross error in conducting an enquiry the service rendered by the said 28 employees. In the judgment and order dated 11 July 1995 in Complaint (ULP) No.94 of 1993. a specific finding was recorded that "*all of them have worked near about 240 days in a year*". In my view, therefore, the Labour Court while deciding the Reference in respect of the Respondent could not have undertaken an enquiry into number of days' service by the 28 employees involved in Complaint (ULP) No.94 of 1993.

17 Respondent rendered hardly 314 days of service and did not exercise any remedy in respect of his grievance of termination for over 12 long years. This factor ought to have been considered by the Labour Court while deciding the Reference filed by him. Respondent is clearly a fence sitter, who awaited result of the litigation in case of his cohorts and woke up out of deep slumber only after this Court accepted the Consent Terms filed with regard to the 28 workers on 27 January 2004. By the time the Industrial Court has passed the impugned Award dated 24 June 2009, period of 17 long years had

elapsed from the date of termination of the Respondent. For having rendered just 314 days of service the Labour Court could not have directed his reinstatement after passage of 17 long years.

18. Though no specific period of limitation is provided in the ID Act, it does not mean that workman can raise dispute relating to his termination at indefinite point of time. The issue is whether any dispute existed in the year 2004 about termination of Respondent. The answer is obviously in the negative. Prior to the year, 2004, Respondent had failed to raise any grievance about his alleged termination for 12 long years. In fact there is no written termination order and the conduct of Respondent in not raising any despite for 12 years clearly indicates possible truth in Petitioners' stand that he stopped reporting for duties after onset of monsoon and suspension of earth work. There is nothing on record to indicate that Respondent ever reported for duties after 20 June 1992 or that he was prevented for performing duties. The whole theory of termination thus appears to be unbelievable. In my view therefore, the Labour Court ought not to have granted the relief of reinstatement in favour of Respondent.

19 Mr. Gavade has strenuously relied upon provisions of the Act particularly section 6(c) thereof. Section 6(c) deals with the duties of the Project Officer and clause (c) provides that preference is to be given to one person in the family whose land is acquired in Class III or Class IV posts against posts reserved as per the Recruitment Rules. Thus there is no mandate for provision of job and what the relevant provision provides is merely grant of preference. I am therefore unable to accept the contention of

Mr. Gavade that Petitioner/State are under any legal obligations to provide any job to Respondent merely because he is Project Affected Person. If he was to compete in selection for appointment, he would get reservation and preference. In any case, while deciding the issue of termination and reinstatement in respect of services already rendered by him, the issue of right of PAP to secure employment under the provisions of the Act cannot be agitated.

20 What remains now is to deal with the judgments cited by Mr. Gavade. In *Executive Engineer, Med. Proj. Division, Nagpur & Anr.* (supra), finding of completion of 240 days of service was recorded by Labour Court and the issue was about validity of termination order in violation of provisions of section 25F of the ID Act. The observations made by this Court in paragraph 14 of the judgment are required to be read in the light of the said factual position. In paragraph 14 of the judgment this Court held as under:

“14. That I have already held that the respondents/complainants being the project affected persons could not have been deprived of employment with the petitioners in such an undue haste and without understanding the nature of their employment under a beneficial legislation. The fact however remains that they have been without employment from 1989 till this date and shockingly enough the Industrial Court has reduced the amount of their backwages to 25%.”

In my view, the judgment in *Executive Engineer, Medium Project Division, Nagpur & Anr.* is clearly distinguishable in view of the fact that the Respondent admittedly did not complete 240 days of service before his termination.

21 In *Suresh Tikaram Pustode* (supra), Division Bench of this Court has considered entitlement of Project Affected Person to seek compassionate

appointment under the Government Resolution dated 21 January 1980. The judgment therefore has no obligation to the facts of the present case.

22 Order of the Apex Court in ***Raman Kumar & Ors.*** (supra) is relied upon in support of plea of discrimination. However, there is no similarity between the 28 employees involved in Complaint (ULP) No.94 of 1993 and the Respondent. Furthermore, the Respondent slept over his remedies for over 12 years and was a fence sitter. The Respondent therefore cannot be compared with the other 28 employees.

23 Judgment of the Orissa High Court in ***Partha Sarathi Dash*** (supra) is relied upon in support of the contention that the principle of ‘no work no pay’ cannot be invoked where the employee is willing to work. I fail to understand as to why the Respondent is relying on this judgment as backwages are already denied to him by the Labour Court he has not challenged the order of the Labour Court. Therefore, entitlement of Respondent to backwages is not even an issue involved in the present Petition. The judgment in ***Partha Sarathi Dash*** (supra) therefore has no application to the present case.

24 Judgment of the Apex Court in ***Sarva Shramik Sangh, Sangli & Ors.*** (supra) is relied upon in support of contention that the Irrigation Department is an Industry under section 2(f) of the ID Act. No dispute is raised by the Petitioners/State atleast during the course of arguments with regard to status of Irrigation Department as Industry. Therefore, it is not necessary to go into that issue.

25 After considering the overall conspectus of the case, I am of the view that no case was made out by the Respondent before the Labour Court for grant of benefit of the reinstatement. The Labour Court has erroneously compared the case of the Respondent with that of 28 employees who are granted status of CRTE in view of Consent Terms filed before this Court. Respondent has admittedly not rendered 240 days of service and no procedure was required to be followed before terminating his services. As per evidence being led before the Labour Court, the services of Respondent were never terminated and he apparently stopped reporting the duties after the onset of monsoon and suspension of the earthwork in the project.

26. The Award passed by the Labour Court is thus indefensible and is liable to be set aside. The Writ Petition is accordingly succeeds. The impugned Award dated 24 June 2009 passed by the Labour Court, Ratnagiri, in Reference (IDA) No.4 of 2007 is set aside. Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

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