IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5316 OF 2007
WITH
CIVIL APPLICATION NO. 97 OF 2022
IN
WRIT PETITION NO.5316 OF 2007

Jayant Sopan Shinde ***...Petitioner***

V/s.

Deputy Conservator Of Forest, Solapur ***...Respondents***

Mr. Rajeshwar G. Panchal *with Mr. Sarang S. Gundajwar for the Petitioner.*

Mrs. V. S. Nimbalkar, *AGP for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 27 September 2024.

P.C. :

1) Petitioner has filed this Petition, challenging Award dated 25 February 2003 passed by the Presiding Officer, first Labour Court, Solapur, answering Reference (IDA) No.61 of 1998 relating to reinstatement of his service in the negative.

2) I have heard Mr. Panchal, the learned counsel appearing for the Petitioner and Mrs. V.S. Nimbalkar, the learned AGP for the Respondent -State.

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3) Petitioner claims to have rendered services from the year 1981 to 1989 and claimed that his services were illegally terminated on 1 January 1990. At his instance, industrial dispute was referred by the appropriate Government to the Labour Court for adjudication of demand for his reinstatement with continuity and full backwages w.e.f. 1 January 1990. It appears that no demand was made with regard to grant of permanency and demand was essentially restricted to the relief of reinstatement. The Labour Court recorded a finding that Petitioner completed 240 days of service and accordingly his oral termination was in violation of provisions of Section 25F of the Industrial Disputes Act, 1947 (**ID Act**). However, the relief of reinstatement was denied to the Petitioner by the Labour Court on the ground of Forest Department is not being 'industry'.

4) It appears that several events have taken place during pendency of the present Petition. The State Government has taken a policy decision vide Government Resolutions (**GR**) dated 19 October 1996, 16 October 2012 and 10 May 2018 for regularisation of services of daily wage workers, who had completed five years of service. The cut-off date for computation of five years service as per GR dated 19 October 1996 /31 January 1996 is 1 November 1994. By subsequent GR dated 16 October 2012 the cut-off date is advanced to 30 June 2004. In my view, therefore, the eligibility of Petitioner deserves to be determined by considering his case as per the GR dated 19 October 1996/31 January 1996, 16 October 2012 and 10 May 2018. Therefore, instead of determining correctness of the Award passed by the Labour Court and deciding the issue of his reinstatement after passage of long time, it would be appropriate that case of the Petitioner is

considered in the light of the above quoted GRs. It would otherwise not be prudent to decide the issue of Petitioner's reinstatement since he has already crossed the age of superannuation.

5) Parties appear to be in dispute with regard to the factum of Petitioner completing 240 days of service during five years, which is the requirement under the above quoted GRs. While Mrs. Nimbalkar invited my attention to affidavit-in-reply to demonstrate that Petitioner has completed four years and 10 months of service during 1 February 1983 to 1 January 1988, it is the contention of Mr. Panchal that Labour Court has already recorded a specific finding that Petitioner has completed 240 days of service in every year between 1981 to 1989. In my view, it is not necessary for this Court to go into the said factual controversy and it would be for Respondents to apply their mind about eligibility of Petitioner for his absorption in terms of various GRs quoted above. This Court has already taken similar course of action with regard to daily wage workers engaged on 'Social Forestry Scheme' in ***the Deputy Director and ORs. Vs. Vijaya Balbhim Mali***[1] .

6) In my view, therefore, the present Petition deserves to be disposed of by directing Respondents to take a decision about eligibility of Petitioner for his absorption in terms of the above quoted GRs. For the limited purpose of considering his eligibility, Petitioner shall be deemed to have been in service on the cut-off date of 1 November 1994 as prescribed in the GR dated 31 January 1996/19 October 1996. In the event, it is found that Petitioner has completed 240 days of service prior to the date of his discontinuance, he can be

1. Writ Petition No.3373 of 2002 decided on 20 September 2024

considered for absorption in service only for the purpose of payment of retirement benefits. In other words, Petitioner shall not be entitled to any other monetary benefits in the form of backwages.

7) I accordingly, proceed to pass the following order:-

(i) Impugned order dated 25 February 2003 passed by the Labour Court, Solapur, is modified for the limited purpose considering eligibility of Petitioner for absorption of his service in terms of GR dated 31 January 1996 /19 October 1996/16 October 2012 and 18 May 2018.

(ii) Petitioner shall be deemed to have been in service as on cut-off date of 1 November 1994.

(iii) Respondent shall determine eligibility of Petitioner for absorption of his service in the light of the above GRs.

(iv) In the event, it is found that the Petitioner fulfils the eligibility criteria laid down in the GR, he shall be regularised in the service only for the purpose of grant of retirement benefits. Petitioner shall not be entitled to any backwages. If he is found eligible for regularisation, he shall be paid the necessary retirement benefits from the date he attained the age of superannuation.

(v) Necessary order shall be passed within three months from today.

8) With the above directions, Writ Petition is partly allowed and disposed of. Rule is partly made absolute, there shall be no order as to costs

9) In view of disposal of the Writ Petition, Civil Application does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]