

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9967 OF 2009****Dashrath Bhagawan Latthe****....Petitioner****V/s.****The Superintending Engineer****....Respondent**

Mr. Dheeraj Patil i/b Mr. Nikhil N. Pawar, for the Petitioner.**Mrs. Vaishali S. Nimbalkar, AGP, for the Respondent.**

CORAM : SANDEEP V. MARNE, J.**Date : 8 AUGUST 2024.****P.C. :**

1) By this Petition, Petitioner has challenged Award dated 27 April 2009 passed by the IInd Labour Court, Kolhapur answering Reference (IDA) No. 152 of 2005 in the negative.

2) Reference (IDA) No. 152 of 2005 was made at the instance of the Petitioner on the strength of his claim for having rendered services from 22 November 1985 to 20 June 1990. In the statement of claim filed by the Petitioner, he challenged the termination of his services and sought reinstatement with full back wages.

3) The Labour Court has proceeded to answer the Reference in the negative by Award dated 27 April 2009, which is the subject matter of challenge in the present Petition. The Petition has been admitted by this

Court by order dated 10 August 2010 and has been called out for final hearing today.

4) Mr. Pawar, the learned counsel appearing for the Petitioner would submit that the Labour Court has erred in dismissing the Reference by holding that there was delay in raising the dispute. Relying on Judgment of this Court in ***Chief Engineer Irrigation Vibhag Vs. Sadaram Muka Sahare***,¹ he would contend that mere delay cannot be a reason for not entertaining the Reference in respect of a valid industrial dispute. He would further submit that Petitioner's service from 21 November 1985 to 12 May 1990 has been admitted and in this regard, he relies on certificate dated 26 February 1991 issued by Deputy Engineer, Mechanical Sub-Division, Kolhapur. He would submit that since Petitioner has rendered 5 years of services, his entitled to be granted the benefit of Kalelkar Award by bringing him on Converted Regular Temporary Establishment ('CRTE'). He would submit that even if employee does not complete 240 days of service but shown to have been employed for a period of 5 years, benefit of Kalelkar Award must be extended to him and in this regard he relies on Judgment this Court in ***State of Maharashtra Vs. M.V. Ghalge & Ors.***,². He would therefore submit that the Labour Court ought to have granted the benefit of Kalelkar Award to the Petitioner.

5) The Petition is opposed by Ms. Nimbalkar, the learned AGP appearing for Respondent. She would submit that there was gross delay of 15 long years in raising the industrial dispute, which alone is a valid ground for rejecting the same and that Petitioner worked merely on projects and his services were discontinued from time to time as the work

1. Writ Petition No.6380 of 2013, decided on 31 October 2014

2. 1991 MHLJ 1557

on the project got completed. There are numerous breaks in the service of the Petitioner. That he has not rendered continued service for getting benefit of Kalelkar Award. She would pray for dismissal of the Petition.

6) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that Respondent claims that he is initially appointed on 21 November 1985. The certificate dated 26 February 1991 relied upon by him indicates that his spells of appointments were as under :-

- “01. 21-11-1985 to 20-6-1986*
- 02. 10-10-1986 to 20-3-1987*
- 03. 21-11-1987 to 20-3-1988*
- 04. 21-11-1988 to 20-5-1989*
- 05. 21-1-1990 to 12-5-1990*

7) The certificate does indicate where there were long breaks in services of the Petitioner. During 21 March 1987 till 21 November 1987, he was not employed. Similar is the position in respect of the year 1988 where he was out of employment from 21 March 1988 to 28 November 1988. The above certificate also shows non-completion of 240 days of service even in a single year. The certificate clearly indicates that he rendered following services : 1985-22 days, 1986-151 days, 1987-147 days, 1988-139 days, 1989-118 days, 1990-59 days.

8) In my view therefore, no procedure was required to be followed under provisions of Section 25-F of the Industrial Disputes Act, 1947 (ID Act) while discontinuing the services of Petitioner. In fact, there is no termination of his services and what is done is mere discontinuation after completion of work of project. In fact, the evidence for Shri Mahadev

Dada Patil, Deputy Executive Engineer, Mechanical Division, Kolhapur indicates that Petitioner has not worked on a single project and has worked on various projects as and when the work was available.

9) It must also be observed that so far as challenge to the alleged termination order, is concerned, there is a delay of 15 long years. Though no specific period of limitation is prescribed for raising industrial dispute under the provisions of the ID Act, it is equally well-settled that only a dispute which is alive can be referred by the appropriate government for adjudication. In the present case, it cannot be stated that any dispute subsisted in the year 2005 when the Reference was made by the appropriate government relating to the alleged termination of the Respondent. Therefore, reliance by Mr. Pawar on the Judgment of this Court in *Chief Engineer, Irrigation Vibhag* (supra) rendered while considering the claim for recovery of dues under Section 33-C(2) of the ID Act would not assist his case.

10) Coming to the aspect of the benefit of CRTE under Kalelkar Award, it must be observed that the said relief was never prayed for by the Petitioner in his statement of claim. The prayer in the statement of claim was only for setting aside termination and for reinstatement. Petitioner never prayed for grant of CRTE benefit under Kalelkar Award. In my view, therefore, it was not even necessary for the Labour Court to consider this aspect. Even otherwise Petitioner has rendered intermittent services on projects as and when the work was available. In such circumstances, it cannot be said that he worked continuously for a period of 5 years, so as to secure any benefit under the Kalelkar Award. The Judgment of this Court in *State of Maharashtra Vs. M.V. Ghalge* (supra)

cannot be cited in support of an absolute proposition that in every case, where a worker is shown to have been engaged for few days in 5 years must be granted benefit of clause 28 of Kallekar Award. Such interpretation would mean that a person engaged for couple of weeks in each year for 5 years would demand benefit of CRTE. Petitioner was engaged for only 90 days in 1990 and 22 days in 1985. Such short stints of service cannot be considered as 'continuous' written the meaning of clause 28 of Kalekar Award. In any case, the *lis* before the Labour Court was only regarding termination and reinstatement and therefore it is not necessary to delve deeper into the aspect of Kalekar Award.

11) After considering the overall conspectus of the case, I am of the view that no interference is warranted in the impugned Award of the Labour Court.

12) Writ Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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