

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10239 OF 2011****Shri. Vithal Shivram Sawant****....Petitioner****V/s.****The Civil Surgeon, Sindhudurg****.....Respondent**

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**Mr. Vikram Walawalkar a/w. Mr. Amey Sawant i/by. Mr. Suresh S. Sabrad, for the Petitioner.****Mr. A.I. Patel a/w. Mr. R.S. Pawar, AGP for State.**

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**CORAM : SANDEEP V. MARNE, J.****Dated : 22 January 2024.****PC. :**

1. By this petition, Petitioner challenges the Award dated 6 April 2011 passed by the Labour Court, Ratnagiri rejecting the Reference made by the appropriate Government with regard to the relief of reinstatement sought for by the Petitioner w.e.f 1 June 2009 alongwith backwages. The Reference is answered in the negative by the Labour Court holding that the Petitioner failed to prove that he worked for more than 240 days. The Labour Court has held that provisions of Section 25-F are therefore not applicable to the present case.

2. The petition was admitted by this Court by Order dated 30 April 2014.

3. I have heard Mr. Walawalkar, the learned counsel appearing for the Petitioner and Mr. Patel, the learned AGP appearing for the Respondent.

4. After having considered the submissions canvassed by the learned counsel appearing for the parties and after going through the Order passed by the Labour Court and various documents placed on record alongwith the petition, it is seen that the Petitioner was initially engaged on the post of 'Kaksha Sevak' (Ward Boy) on 23 December 2002. It appears that he continued to work in broken spells upto 30 May 2009. After 1 June 2009, the District Civil Surgeon, Sindhudurg did not issue any Certificate/Appointment Order to the Petitioner. The Petitioner however contends that he continued to work in absence of any engagement order/certificate. In support of his contention of such engagement, various documents are placed on record which indicate that services of the Petitioner were utilized for procurement of medicines from the Regional Mental Office at Ratnagiri. It is submitted that such engagement after 1 June 2009 is on payment of meagre wages which are deposited directly in the account of the Petitioner. Mr. Walawalkar would contend that even till date, the Petitioner continues to work in the General Hospital at Sindhudurg as Ward Boy. He would submit that the Petitioner can demonstrate such working by producing the extract of bank account

in which the wages are deposited every month. Mr. Walawalkar would invite my attention to the Order dated 12 August 2013, wherein the contention of the Petitioner about existence of 90 vacant posts of Ward Boy are recorded. He would submit that even as on date as many as 108 vacancies of Ward Boy are available in the hospital at Sindhudurg District.

5. Be that as it may, from various contentions that are sought to be canvassed on behalf of the Petitioner, it appears that the main relief that the Petitioner ultimately vie is for absorption in service. Assertion about existence of vacancy is also aimed at the relief of absorption. However, perusal of the Reference Order would indicate that the Reference was made only qua the relief of reinstatement. Since the Petitioner himself contends that he is continuing to work in the Hospital after 1 June 2009, the issue of reinstatement, in that sense, has become academic. On the contrary, on the strength of his alleged continuous service from the year 2002 till date, the Petitioner now wants to claim the relief of absorption in service. The issue of absorption was not before the Labour Court. Therefore it would be necessary for the Petitioner to adopt necessary proceedings seeking the relief of absorption based on his claim of continuous service from the year 2002 till date. For that purpose, liberty is required to be granted to the Petitioner to agitate his grievance with regard to absorption by adopting necessary remedies. Petitioner can either seek a reference in respect of his prayer for absorption or he can file complaint under the provisions of the Maharashtra Recognition of

Trade Unions and Prevention of Unfair Labour Practices Act, 1971 seeking the relief of absorption.

5. Mr. Walawalkar, would express an apprehension that the findings recorded by the Labour Court about non-completion of 240 days of service may come in the way of the Petitioner seeking the relief of absorption. In my view, the findings recorded by the Labour Court are only with regard to the applicability of provisions of Section 25-F of the Industrial Disputes Act. The issue before the Labour Court was restricted only to the relief of reinstatement. Since the Petitioner is already in service, there is no requirement of seeking any relief of reinstatement. On the other hand, the relief of absorption in service is a larger relief which requires adjudication. Therefore, the observations made by the Labour Court in the impugned Award of non-completion of 240 days of service would not come in the way of adjudication of Petitioners claiming for absorption. If indeed Petitioner is able to prove the Industrial Adjudicator that he has worked continuously since 2002, his claim for absorption would be considered and decided based on the evidence led by him.

7. The Writ Petition is accordingly **disposed of** by granting liberty to the Petitioner for initiating appropriate proceedings for relief of absorption in service. While deciding the relief of absorption, the Industrial Adjudicator shall not be influenced by the observations made in the Award dated 6 April 2011. With the above observations,

the Writ Petition is **disposed of**. All contentions of both the parties on merits are left open.

**SANDEEP V. MARNE, J.**